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Part 1

ORIGINAL

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1987

M-2009

JULY 17, 1986.—Ordered to be printed

Mr. HAMILTON, from the Permanent Select Committee on Intelligence, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 4759]

The Permanent Select Committee on Intelligence, to whom was referred the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for the intelligence and intelligence-related activities of the U.S. Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass with an amendment.

PURPOSE

The bill would:

(1) Authorize appropriations for fiscal year 1987 for (a) the intelligence and intelligence-related activities of the U.S. Government, (b) the Intelligence Community Staff and (c) the Central Intelligence Agency Retirement and Disability System;

(2) Authorize the personnel ceilings on September 30, 1987, for the intelligence and intelligence-related activities of the U.S. Government;

(3) Permit the Director of Central Intelligence to authorize personnel ceilings in fiscal year 1987 for any intelligence elements up to 2 percent above the authorized levels;

(4) Provide restrictions on support for military or paramilitary operations in Nicaragua and Angola;

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(5) Provide survivor annuities and health benefits for certain former spouses of CIA personnel;

(6) Improve U.S. counterintelligence and security programs;

(7) Provide new authorities for benefits for and management of intelligence personnel;

(8) Provide for international mapping data exchanges; and

(9) Require prior notice to the intelligence committees of Congress of covert arms transfers.

Overall Perspective on the Intelligence Budget

COMMITTEE INTENT

The classified schedule of authorizations and the detailed explanation found in the annex to this public report contain a thorough discussion of all budget issues considered by the committee and are available to all Members of the House. The schedule of authorizations lists the dollar amounts and personnel ceilings for all the intelligence and intelligence-related programs authorized by the bill. These are directly incorporated into, and are integral to, the bill itself. It is the intent of the committee that all intelligence programs discussed in the annex to this report be conducted in accordance with the guidance and limitations contained therein.

SCOPE OF COMMITTEE REVIEW

The National Foreign Intelligence Program budget consists of resources of the following departments, agencies, and other elements of the Government: (1) the Central Intelligence Agency; (2) the Department of Defense; (3) the Defense Intelligence Agency; (4) the National Security Agency; the Departments of the Army, Navy and Air Force; (6) the Department of State; (7) the Department of the Treasury; (8) the Department of Energy; (9) the Federal Bureau of Investigation; (10) the Drug Enforcement Administration; and (11) the Intelligence Community Staff of the Director of Central Intelligence.

The Department of Defense Tactical Intelligence and Related Activities (TIARA) are a diverse array of reconnaissance and target acquisition programs which are a functional part of the basic force structure and provide direct information support to military operations. TIARA, as defined by the Joint Chiefs of Staff and the Secretary of Defense, include those activities outside the Defense Intelligence program which respond to military commanders for operational support information as well as to national command, control, and intelligence requirements. These military intelligence activities also fall within the jurisdiction of the Committee on Armed Services.

Beginning in February 1986, the Program and Budget Authorization Subcommittee conducted a series of hearings which ran through March. The budget hearings involved a total of more than 30 hours of testimony with witnesses from each major intelligence and intelligence-related program. These budget hearings resulted in written responses to many additional questions.

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Overall Committee Findings and Recommendations

The administration requested real growth for fiscal year 1987 over the amount Congress appropriated for intelligence in fiscal year 1986. The committee is convinced that U.S. intelligence agencies are performing a vital service for the national security. As in the past years, the committee also finds certain shortcomings in the management and conduct of certain of the nation's intelligence activities. Recommendations for making improvements in these areas are contained in the classified annex to this report and the committee will be pursuing these and other related issues further during the coming months.

The committee was not convinced that the total amount requested for fiscal year 1987 was fully warranted. The committee supports a lower level of effort than that requested by the President in his budget. Therefore, the committee has recommended deferral of certain proposals and the deletion of others, while a few items were increased. The overall impact of the recommendation is a significant reduction in the request.

In the committee's view the recommended authorization for intelligence and intelligence-related activities in this bill represents a reasonable balance between needed capabilities and prudent cost.

It should be understood that the intelligence budget is largely a subset of the defense budget. Almost all of the intelligence budget is contained within the defense budget both for reasons of security and because the great majority of intelligence activities are conducted by elements of the Department of Defense. Thus, increases and decreases for intelligence are largely changes within the defense budget and are not *direct* changes to the federal budget as a whole. The committee has recommended reductions which are generally commensurate with those applied to defense as a whole and which provide adequate funding for essential intelligence activities.

The committee recognizes that the budget submitted by the Director of Central Intelligence grew considerably less this year compared to some previous years. Additional demands for intelligence will create pressure for greater growth. The committee believes that little real growth can be expected for the next several years.

Amendment

The Committee adopted by voice vote the following amendment: Add at the end of the bill the following new section:

COVERT AGENT DISCLOSURE FEDERAL PENSION FORFEITURE

Sec. 603. Section 8312(c)(1)(C) of title 5, United States Code is amended by striking the period at the end thereof and inserting in lieu thereof "or section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to intelligence identities).".

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Section-By-Section Analysis of Bill as Reported

TITLE I—INTELLIGENCE AND INTELLIGENCE-RELATED ACTIVITIES

Sections 101-105

Section 101 lists the departments and agencies for whose intelligence and intelligence-related activities the bill authorizes appropriations for fiscal year 1987.

Section 102 makes clear that details of the committee's recommendations with respect to the amounts authorized to be appropriated for intelligence and intelligence-related activities and personnel ceilings covered under this title for fiscal year 1987 are contained in a classified schedule of authorizations to the bill and explained in the classified annex to this report. The schedule of authorizations is incorporated into the bill by this section.

Section 103 permits the Director of Central Intelligence to authorize the personnel strength of any intelligence element to exceed the fiscal year 1987 authorized personnel levels by no more than 2 percent if he determines that doing so is necessary for the performance of important intelligence functions. The Director must notify the two intelligence committees promptly of any exercise of authority under the section.

The Committee emphasizes that the authority conveyed by Section 103 is not intended to permit the wholesale raising of personnel strength in each or any intelligence component. Rather, the section provides the Director of Central Intelligence with flexibility to adjust personnel levels temporarily for contingencies and for overages caused by an imbalance between hiring of new employees and attrition of current employees from retirement, resignation, and so forth. The committee does not expect the Director of Central Intelligence to allow heads of intelligence components to plan to exceed personnel levels set in the schedule of authorizations except for the satisfaction of clearly identified hiring needs which are consistent with the authorization of personnel strengths in this bill. In no case is this authority to be used to provide for positions denied by this bill.

Section 104 of the bill provides that the authorization of appropriations by the bill shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

Section 105 of the bill provides authority for adjustments to Federal employee compensation and benefit increases during fiscal year 1987 which are authorized by current law or subsequently enacted law. It obviates the necessity for a separate authorization for such increases during the fiscal year.

Section 106: Restriction on Support for Military or Paramilitary Operations in Nicaragua

Section 106 provides that funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal year 1987 to provide funds, materiel or other assistance to the Nicaraguan democratic resist-

ance to support military or paramilitary operations in Nicaragua only as authorized pursuant to Section 101 and as specified in the classified schedule of authorizations referred to in Section 102, Section 502 of the National Security Act of 1947, or any provision of law specifically providing such funds, materiel or assistance, such as is contained in H.R. 5052, the Military Construction Appropriations Act, 1987, passed by the House of Representatives on June 25, 1986.

Section 106 continues in force the provisions of Section 105 of the Intelligence Authorization Act for FY 1986 (P.L. 99-169). Its principal effect is to ensure that only funds specifically authorized by the bill or those specifically authorized by separate legislation approved by the House and Senate may be provided to assist the military or paramiliary operations of the Nicaraguan democratic resistance. Section 106, in effect, preserves the position that any assistance provided to the Nicaraguan democratic resistance must be openly requested and approved by the Congress with certain very specific exceptions, such as the provision of intelligence to the Nicaraguan democratic resistance, explicitly authorized by the bill.

Section 106 would prohibit during fiscal year 1987, as does Section 105 of P.L. 99-169 during FY 1986, the use of funds from the CIA's Reserve for Contingencies for assistance to the military or paramilitary operations of the Nicaraguan democratic resistance except to the extent approved by reprogramming or transfer approval action submitted to the appropriate committees of the Congress, which would include the intelligence and appropriations committees of the House and Senate. Of course, funds from any other accounts appropriated to the CIA, the Department of Defense, or any other agency or entity involved in intelligence activities could not be transferred to assist the military or paramilitary operations of the Nicaraguan democratic resistance without reprogramming or transfer approval by the same committees.

This result stems from the application of Section 502 of the National Security Act of 1947 which provides that funds may not be spent for an intelligence activity unless they have been specifically authorized and, in the case of the Reserve, provides that funds may be provided for a particular intelligence activity if the Director of Central Intelligence has given appropriate notice to the intelligence committees of the House and Senate. As noted above, funds authorized during fiscal year 1987 for the CIA's Reserve for Contingencies are not available for support to the military or paramilitary activities of the Nicaraguan democratic resistance. (Funds requested for the Reserve would ordinarily be available to fund any intelligence activity, other than one for which Congress has denied funds. The Committee has denied use of the Reserve in FY 1987 to assist the military or paramilitary operations of the Nicaraguan democratic resistance.)

Further, since assistance to the military or paramilitary operations of the Nicaraguan democratic resistance is a matter of significant Congressional interest, any transfer of funds from other accounts for this purpose would require a reprogramming or transfer approval action. Finally, Subsection 502(b) of the National Security Act of 1947 does not permit the funding of intelligence activities for which funds have been denied by Congress. Even if substan-

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tial changes in such proposed activities occur, the only avenue to secure reconsideration of such denial is through a reprogramming or transfer approval submitted to the appropriate committees.

As under current law, the provision of intelligence information and advice to the Nicaraguan democratic resistance is both authorized and permitted by Section 106. These activities may continue as provided for in accordance with the joint explanatory statement of managers to accompany the conference report on H.R. 2419 of the 99th Congress (H. Rept. 99-373, pages 14 through 17). No other support to the military or paramilitary operations of the Nicaraguan democratic resistance is authorized by the bill.

The Committee anticipates that, if both Houses approve separate legislation providing additional assistance to the Nicaraguan democratic resistance, regardless of whether or not such legislation is approved prior to or subsequent to enactment of the FY 1987 Intelligence Authorization Act, the terms and conditions of such separate legislation will control the nature and extent of U.S. assistance to the military or paramilitary operations of the Nicaraguan democratic resistance to the extent they are inconsistent with Section 106. If there is no separate legislation or if such legislation were silent on matters covered by Section 106, then the provisions and conditions of Section 106 would control on matters involving any assistance to the military or paramilitary operation of the Nicaraguan democratic resistance.

Section 107: Restriction on Support for Military or Paramilitary Operations in Angola

Section 107 provides that during fiscal year 1987, the CIA, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may obligate or expend funds to conduct, directly or indirectly, military or paramilitary operations in Angola, or to provide any financial, material, or other assistance, directly or indirectly, to any group engaged in military or paramilitary operations in Angola, only pursuant to the provisions of H.R. 4276 of the 99th Congress, as reported by the Permanent Select Committee on Intelligence. These terms and conditions, namely the requirements of Section 2(b) and the conditions set forth in Sections 2(c) and 2(d) of H.R. 4276, are set forth in that bill and explained in the report of the Permanent Select Committee on Intelligence to accompany H.R. 4276 (H. Rept. 99-508, Part I, pages 4 through 6).

The effect of Section 107 is to prohibit the use of any funds available to agencies involved in intelligence activities to support military or paramilitary operations in Angola unless the President publicly requests and the Congress, by joint resolution, approves assistance for such military or paramilitary operations. In particular, Section 107 has the effect of denying the use of any funds in the FY 1987 Intelligence Authorization Act for this purpose. Absent Section 107, funds available to intelligence agencies, including the CIA, could be used for military or paramilitary operations in Angola.

As the Committee stated in its report to accompany H.R. 4276, providing assistance to support the military or paramilitary oper-

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ations of the Union for Total Independence of Angola (UNITA) is an important foreign policy decision because it raises serious and substantive foreign policy issues concerning: U.S. relations with black African nations; the future of U.S.-brokered negotiations to secure the independence of Namibia; the role and interest of the Soviet Union in southern Africa; relations between South Africa and its black Africa neighbors; possible linkage of the United States with South Africa by assistance to UNITA; the presence of Cuban troops in Angola; U.S. economic interests in Angola; superpower conflict in Angola; and many others.

The Committee has also determined that the question of assistance to UNITA is a matter of significant public debate and some disagreement. To this debate have contributed the President, the Vice President, the Assistant Secretary of State for African Affairs, and a range of other important Administration officials, both on and off the record. Pledges of assistance to UNITA by the President can be found in his November 22, 1985 statement to the New York Times and in his State of the Union Address to the Congress on February 4, 1986. Public statements by other Administration officials appear to confirm that assistance will be provided, as well as the specifics of that aid. These statements contribute to the public debate on the issue and have helped give rise, for example, to public announcements of support or opposition to aid to UNITA by nearly half the Members of the House of Representatives.

Under such circumstances, the Committee opposes the use of Presidential covert action authority to authorize a covert action policy of support to UNITA because, in effect, such a program would not be covert and because such use would effectively bypass the role of Congress in debating significant foreign policy decisions.

The Committee is further of the view that, although the President must initiate and manage foreign policy, he cannot expect sustained support for foreign policy initiatives, including covert action operations, that are generally unpopular or where a covert action mechanism can be viewed as having been chosen to avoid public debate or a Congressional vote on the matter. The Committee is opposed to the use of covert action capabilities in such cases because they undermine support for other covert action programs and because they virtually guarantee that such programs cannot remain covert under any reasonable interpretation of that term.

The Committee, of course, is not opposed to covert actions. It has supported both politically and financially a full covert action capability for the President. It supports in this bill a number of covert action operations throughout the world. Nor does it conclude that all paramilitary covert actions must be submitted to a vote or that paramilitary covert actions cannot, under any circumstances, remain covert or be successful. Yet, when advance planning for a successful covert operation appears to have been conducted via political speeches and in the press, the Committee does not consider that the possibilities for such a possible program remaining covert are at all strong.

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TITLE II—INTELLIGENCE COMMUNITY STAFF

Sections 201–203

Section 201 authorizes the appropriation of $21,700,000 for fiscal year 1987 for the Intelligence Community Staff (IC Staff), which provides the Director of Central Intelligence with staff assistance to carry out his intelligence community responsibilities. The IC Staff supports the Director of Central Intelligence in the execution of his responsibilities to develop, review, and approve the National Foreign Intelligence Program budget, to evaluate the performance of foreign intelligence activities, and to develop issues, goals, and other required guidance for the intelligence community.

Sections 202 and 203 provide certain administrative authorities for the Intelligence Community Staff.

Section 202(a) authorizes 235 full-time personnel for the staff. The Intelligence Community Staff is composed of a permanent cadre, detailed community personnel, and contract hirees. The purpose of section 202(b) is to authorize this method of staffing and to require that detailed employees represent all appropriate elements of the Government, including those engaged in intelligence-related activities. Section 202(c) requires that personnel be detailed on a reimbursable basis except for temporary situations. The Staff's authorized size, in the opinion of the committee, is sufficient for the duties which the Staff performs. This provision is intended to insure that its ranks are not swelled by detailees, the personnel costs for whom are not reimbursed to their parent agency.

Section 203 provides the Director of Central Intelligence with authority to manage the activities and to pay the personnel of the Intelligence Community Staff because the Staff is not otherwise authorized by law. However, it is the committee's intent that in the case of detailed personnel, the Director's authority to discharge personnel shall only extend to discharging detailed personnel from service at the Intelligence Community Staff and not from Federal employment or military service.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 301: Authorization of Appropriations

Section 301 authorizes appropriations for the Central Intelligence Agency Retirement and Disability System (CIARDS) in the amount of $125,800,000 for fiscal year 1987. The Central Intelligence Agency Retirement Act of 1964 for Certain Employees (Public Law 88-643) authorized the establishment of CIARDS for a limited number of Agency employees and authorized the establishment and maintenance of a fund from which benefits would be paid to qualified beneficiaries.

The requested CIARDS funds will finance:

(1) Interest on the unfunded liability;

(2) The cost of annuities attributable to credit allowed for military service;

(3) Normal cost benefits not met by employee and employer contributions;

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(4) The increase in unfunded liability resulting from liberalized benefits and Federal pay raises.

The benefits structure of CIARDS is essentially the same as for the Civil Service Retirement System with only minor exceptions. These exceptions are: (a) annuities are based upon a straight 2 percent of high 3-year average salary for each year of service, not exceeding 35; (b) under stipulated conditions a participant may retire with the consent of the Director, or at his direction be retired at age 50 with 20 years service, or a participant with 25 years of service may be retired by the Director regardless of age; and (c) retirement is mandatory at age 65 for personnel receiving compensation at the rate of GS–18 or above, and at age 60 for personnel receiving compensation at a rate less than GS–18, except that the Director may, in the public interest, extend service up to 5 years.

Annuities to beneficiaries are provided exclusively from the CIARDS fund maintained through: (a) contributions, currently at the rate of 7 percent, deducted from basic salaries of participants designated by the Director; (b) matching Agency (employer) contributions from the appropriation from which salaries are paid, based on the actual rate of contributions received from participants; (c) transfers from the Civil Service Retirement and Disability Fund representing employee and matching employer contributions for service of Agency employees prior to the date of their participation in CIARDS, and contributions for service of integrated Agency employees included in CIARDS following termination of integrated status; (d) income on investments in U.S. Government securities; and (e) beginning in 1977, direct appropriations consistent with the provisions of Public Law 94–552.

Section 302: Survivor Benefits for Certain Former Spouses of CIA Employees

Section 302 (a) of the bill provides survivor benefits for certain former spouses of CIA employees who did not benefit from the Central Intelligence Agency Spouses' Retirement Equity Act of 1982 (P.L. 97–269, Title VI) because they were divorced prior to the effective date of that Act (November 15, 1982).

The CIA Spouses' Retirement Equity Act granted certain former spouses of CIA employees a presumptive entitlement, subject to revision by spousal agreement or by State courts in divorce proceedings, to a pro rata share of the employees' retirement annuities, survivor benefits, and lump-sum disbursements paid from the retirement fund. Former spouses qualified for the presumptive entitlement were those married to a CIA employee during at least ten years of the employee's creditable government service, at least five years of which they spent outside the United States. The Congress provided the benefits to these spouses in recognition of their years of support of the unusual professional activities abroad of their CIA employee spouses and their own direct contributions to fulfillment of the mission of the CIA. Both the requirements of their support to their CIA employee spouses and their direct contributions often prevented the former spouse from acquiring marketable job skills and pension rights and imposed familial pressures and tensions which often contributed to the breakdown of their marriages.

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When the intelligence committee of the other body considered the legislation which became the CIA Spouses' Retirement Equity Act, it noted that, because the benefits of the Act were prospective only, spouses divorced prior to the effective date of the Act would not benefit, despite their important contribution. That committee noted that ". . . at some future date the Congress may wish to consider providing additional benefits to this group in recognition of their important service." (S. Rept. 97-484, p. 15) The Committee believes that the time has arrived to provide to this group of former spouses of CIA personnel the benefits they deserve and thus includes Section 302 in the bill.

Section 302(a) adds a new Section 224 to the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) to provide survivor benefits for certain former spouses of CIA personnel divorced prior to November 15, 1982.

Section 224(a) of the CIA Retirement Act as contained in the bill provides a survivor annuity to a "former spouse" of a CIA employee who was a participant or former participant in the CIA Retirement and Disability System (CIARDS), if they were divorced prior to November 15, 1982, the effective date of the CIA Spouses' Retirement Equity Act of 1982. The term "former spouse" as defined in Section 204(b) of the CIA Retirement Act includes only a former wife or husband of a present or former CIARDS participant who was married to the participant during at least 10 years of his creditable service, at least 5 years of which were spent together outside the United States. The survivor annuity is paid in an amount equal to 55% of the greater of (1) the full amount of the present or former participant's annuity or (2) the full amount of what the present or former participant's annuity would have been if not for the participant's withdrawal of lump-sum portions of contributions made with respect to the participant's annuity; the amount is reduced by the amount of any federal government annuity (other than Social Security benefits) the former spouse receives that is attributable to the former spouse's own employment by the United States.

Section 224(b) of the CIA Retirement Act as contained in the bill disqualifies an otherwise qualified former spouse from receiving the survivor annuity benefit if (1) the present or former participant to whom the former spouse was married has elected under Section 223 of the CIA Retirement Act to provide a survivor annuity to the former spouse, (2) the former spouse remarries before age 55, or (3) the former spouse is less than 50 years of age.

Section 224(c) of the CIA Retirement Act as contained in the bill specifies rules for determining the dates upon which the survivor annuities to former spouses shall commence and terminate and provides for application to the Director of Central Intelligence for such annuities.

Section 224(d) of the CIA Retirement Act as contained in the bill requires the Director of Central Intelligence to issue implementing regulations within 60 days of enactment of the legislation and requires him to make every effort to notify former spouses of their rights under Section 224. All regulations issued by the Director under Section 224(d) will be submitted to the intelligence commit-

tees of the Congress before they take effect, as required by Section 201(a) of the CIA Retirement Act.

Section 302(b) of the bill makes a conforming amendment to Section 14(a) of the CIA Act of 1949 to ensure that former spouses of CIA employees who participated in a federal retirement system other than the CIA Retirement and Disability System (CIARDS), receive the same benefits as former spouses of CIA employees who participated in the CIARDS on the same basis. The same benefit eligibility requirements regarding years of marriage and overseas service that applied under the CIA Spouses' Retirement Equity Act of 1982 apply to benefits for former spouses of both CIARDS and non-CIARDS employees under the amendments made by Section 302.

Section 302(c) provides for funding the survivor benefits granted by the amendments to the CIA Retirement Act of 1964 for Certain Employees and the CIA Act of 1949 by subsections 302 (a) and (b).

Section 302(d) provides an effective date of October 1, 1986 for the amendments made by section 302 to the CIA Retirement Act of 1964 for Certain Employees and the CIA Act of 1949.

Section 303: Health Benefits for Certain Former Spouses of CIA Employees

Section 303 of the bill adds a new Section 16 to the Central Intelligence Agency Act of 1949 permitting a former spouse of a CIA employee to enroll in a federal employee health benefits plan (see chapter 89 of title 5, United States Code) if they were divorced prior to May 7, 1985. To qualify, the former spouse must have been married to the CIA employee during at least 10 years of his creditable service, at least 5 years of which were spent together outside the United States, and must have been covered under a federal health benefits plan as a member of the family of the CIA employee at some time during the 18-month period before the divorce or annulment became final. The eligible former spouse need not enroll in the same plan as that which covered the spouse at some time during that 18-month period.

The eligible former spouse may enroll for self alone or self and family during a special enrollment period beginning on the date of enactment of this legislation and ending 6 months thereafter, except that the Director of the Office of Personnel Management shall waive the 6-month limitation when the Director of Central Intelligence notifies him that circumstances so warrant.

The legislation disqualifies an otherwise eligible former spouse from enrolling in a health plan if (1) the spouse remarries before age 55 or (2) the spouse already is enrolled in a federal health benefits plan.

The Director of the Office of Personnel Management prescribes the regulations for enrollment and payment by eligible former spouses. The Director of Central Intelligence determines the identities and addresses of eligible former spouses and notifies them of their health plan benefit rights.

The Committee limited the eligibility for health plan enrollment under this section to former spouses divorced prior to May 7, 1985 because similarly situated former spouses divorced after that date

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are eligible already for such benefits under the Civil Service Spouse Retirement Equity Act of 1984 (P.L. 98-615).

For health plan coverage under the amendment made by Section 303 of the bill, the former spouse pays both the amount a federal employee would pay for the same benefit and the amount that the federal government would contribute on behalf of the federal employee. Thus, since the former spouses pay the equivalent of both an employee's contribution and the government's associated contribution, the former spouses receive the health plan benefit at no cost to the government, other than the incidental costs associated with administration of the benefit.

TITLE IV—COUNTERINTELLIGENCE AND SECURITY

Section 401: Counterintelligence Official Visitor Exchanges

Section 401 of the bill amends Titles 10 and 28 of the United States Code to authorize the Director of the Federal Bureau of Investigation and the Secretary of Defense to pay the expenses of hosting foreign official visitors in the United States to consult with FBI and DOD officials on counterintelligence matters.

The duties of the Director of the Federal Bureau of Investigation include the conduct of counterintelligence activities within the United States, the conduct of such activities outside the United States in coordination with the CIA, the coordination of such activities conducted within the United States by other intelligence community agencies, and production and dissemination of counterintelligence. The duties of the Secretary of Defense include the conduct of counterintelligence activities within the United States in coordination with the FBI, the conduct of such activities outside the United States in coordination with the CIA, and the collection, production and dissemination of military and military-related counterintelligence.

In carrying out their counterintelligence responsibilities, the Director of the FBI and the Secretary of Defense or their subordinates with counterintelligence duties meet with their counterparts in foreign governments with whom the United States cooperates to counter hostile intelligence activities or international terrorism. The exchange of information and expertise during these visits contributes significantly to the efforts of the FBI and the DOD to counter hostile intelligence activities and international terrorism.

The liaison meetings between U.S. counterintelligence officials and counterintelligence officials of foreign countries take place both in the United States and abroad. When the meetings occur abroad, the host country may furnish to visiting FBI or DOD counterintelligence personnel lodging, meals, transportation and similar reception and representation services related to the official visit, at no cost to the U.S. Government. When the meetings occur in the United States, the FBI and the DOD cannot reciprocate, as they lack statutory authority to spend appropriations for such reception and representation expenses of visiting counterintelligence officials of foreign countries. Granting to the FBI and the DOD authority to reciprocate by paying official reception and representation expenses for visiting counterintelligence officials of foreign countries

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would facilitate the logistical arrangements for such visits and avoid embarassment to the U.S. Government resulting from foreign countries' extending hospitality to U.S. officials that the U.S. Government does not reciprocate. Accordingly, Section 401 of the bill amends chapter 33 of title 28, United States Code and chapter 4 of title 10 to grant the FBI and the DOD the authority to pay such expenses.

The FBI and the DOD may use the authority to pay official reception and representation expenses strictly for liaison with foreign counterintelligence officials on counterintelligence matters, including international terrorism matters. The FBI and the DOD may not use the authority to pay such expenses for liaison related to FBI or DOD functions other than counterintelligence functions, nor should it be used to pay expenses for foreign officials for whom the Department of State or another government agency would as a matter of practice have paid the expenses, in the absence of this new authority for the FBI and the DOD. The Committee expects that use of the authority granted by Section 401 of the bill will not result in large expenditures.

Section 402: FBI Access to State and Local Criminal Records for Security Clearances

Section 402 amends Section 9101 of Title 5 of the United States Code to grant to the Federal Bureau of Investigation the same mandatory access to State and local criminal records as the Department of Defense, the Office of Personnel Management, and the Central Intelligence Agency enjoy under Section 9101. Section 9101 of Title 5 provides for access to criminal history record information in investigations for determining eligibility for access to classified information or assignment to or retention in sensitive national security duties. The FBI conducts such investigations for FBI personnel, certain other executive branch personnel, and certain legislative branch staff personnel.

The Committee's intent with Section 402 of this bill is identical in all respects with the legislative history of Section 9101 contained in the joint explanatory statement of managers to accompany the conference report on the Intelligence Authorization Act for Fiscal Year 1986 (H. Rept. 99-373, pp. 24-30) and that joint explanatory statement is incorporated here by this reference.

Section 402(a) amends section 9101 of Title 5 to add the FBI at the end of the list each time DOD, OPM, and CIA appear in the section, with the effect of giving the FBI authority identical to that section 9101 gives to DOD, OPM, and CIA.

Section 402(b) amends Section 803(a) of the Intelligence Authorization Act for Fiscal Year 1986 (P.L. 99-169) to include the FBI, with the result that the Department of Justice must consult the FBI, along with DOD, OPM, and CIA, in preparing the report on section 9101 required by section 803(a) of that Act.

Section 402(c) provides that the amendments to section 9101 made by section 402 are effective only with respect to FBI inquiries made after the date of enactment of the FY 1987 Intelligence Authorization Act.

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Section 403: Permanent Extension of DOD Authority To Use Proceeds from Counterintelligence Operations

Section 403 of the bill adds a new Section 140e to chapter 4 of Title 10 of the United States Code to place in permanent law the authority granted to the Secretary of Defense by Section 701 of the Intelligence Authorization Act for Fiscal Year 1986 (P.L. 99-169) to use proceeds from counterintelligence operations of the military departments in the conduct of such operations, with two modifications.

Section 140e of title 10 as added by Section 403 of the bill differs from the authority granted by Section 701 of the Intelligence Authorization Act for Fiscal Year 1986 only in that it grants permanent authority, as opposed to single fiscal year authority, and that it contains additional language which explicitly authorizes the use of proceeds from counterintelligence operations to make awards to personnel involved in such operations if use of appropriated funds to make such awards would not be practicable.

The Department of Defense informed the Committee that it had determined that Section 701 of the FY 1986 Intelligence Authorization Act, read in light of other laws, did not permit the use of proceeds from counterintelligence operations to make awards to the personnel involved in such operations based on their superior performance, as opposed to operational support payments necessary to the success or security of such operations. The Committee believes that, given the extraordinary and sensitive nature of the activities in which personnel involved in the counterintelligence operations of the military departments engage, the Secretary of Defense should possess authority to make awards based on superior performance to such personnel from the proceeds of counterintelligence operations in certain circumstances.

The Committee expects the Secretary of Defense to keep the Committee informed on the use of the authority to use the proceeds of counterintelligence operations.

Section 404: FBI Counterintelligence Access to Financial Records of Agents of Foreign Powers

Section 404 of the bill amends Section 1114(a) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)) to grant the FBI authority to obtain a customer's or entity's records from a financial institution for counterintelligence purposes if the Director of the Federal Bureau of Investigation (or the Director's designee) finds that there are specific and articulable facts giving reason to believe that the customer or entity is a foreign power or an agent of a foreign power as defined in the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801). The FBI bears primary responsibility for counterintelligence in the United States and thus devotes substantial resources to countering espionage activities and international terrorism activities of hostile foreign powers.

For hostile foreign powers to create, support, and operate an espionage network or terrorist network takes money. Financial records relating to espionage or terrorist activities can provide the FBI with information relevant to identifying such activities or rendering them ineffective. The FBI does not currently possess manda-

tory authority for access to the financial records of foreign powers and their agents under the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), which governs access to customers' records held by financial institutions. Section 404 of the bill provides such mandatory access to aid the FBI in performing its counterintelligence functions effectively.

In 1976, the Supreme Court held that the fourth amendment does not confer upon a bank's customers a constitutional right to the privacy of their financial records possessed by the bank (*United States* v. *Miller*, 425 U.S. 435 (1976)). In response to the Supreme Court's decision, the Congress enacted the Right to Financial Privacy Act (RFPA) of 1978 (12 U.S.C. 3401 et seq.). That Act generally provides that, when the Government seeks the records of a customer of a financial institution which are relevant to a legitimate law enforcement inquiry, it must employ a subpoena or formal written request reviewable in court, or obtain a search warrant. Unless a judicial officer enters an order to the contrary delaying notice, the customer receives notice of the Government's request for the records and an opportunity to contest the Government's request in court.

In contrast to the general provisions of the RFPA which require notice to the customer of a governmental request for records and an opportunity to litigate, Section 1114(a) of the RFPA governing intelligence and counterintelligence agencies' requests for financial records does not provide for notice and an opportunity to litigate and, indeed, prohibits financial institutions from giving notice to the customers whose records are requested. The FBI could not effectively monitor and counter the clandestine activities of hostile espionage agents and terrorists if they had to be notified that the FBI sought their financial records for a counterintelligence investigation.

Currently under Section 1114(a) of the RFPA, to gain access to financial records for counterintelligence investigations, the FBI issues a letter, called a "national security letter," signed by an appropriate supervisory official and certifying compliance with the applicable provisions of the RFPA, seeking financial records relevant to FBI counterintelligence activities. Section 1114 currently does not, however, mandate that financial institutions comply with FBI requests for access to the financial records under the intelligence provisions of the RFPA; it merely permits the banks to do so if they so choose, without regard to other provisions of the RFPA.

The FBI has stated that most financial institutions cooperate with the FBI in making financial records available in accordance with Section 1114(a) of the RFPA. However, the FBI has advised the Committee that in certain significant instances, financial institutions have declined to grant the FBI access to financial records in response to requests under Section 1114(a). The FBI informed the Committee that the problem occurs particularly in States which have State constitutional privacy protection provisions or State banking privacy laws. In those States, financial institutions decline to grant the FBI access because State law prohibits them from granting such access and the RFPA, since it permits but does not mandate such access, does not override State law. In such a situation, the concerned financial institutions which might otherwise

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desire to grant the FBI access to a customer's records will not do so, because State law does not allow such cooperation, and cooperation might expose them to liability to the customer to whose records the FBI sought access. Section 404 of the bill, by providing for mandatory FBI access to a customer's or entity's financial records for counterintelligence purposes in certain circumstances, preempts State law to the contrary which otherwise would not permit such access. The mandatory nature of the provisions also protects financial institutions from the possibility of liability to customers or entities under State privacy law. The Committee notes also that financial institutions located in the United States which are organized or doing business in foreign countries may be subject to, or may believe themselves to be subject to, foreign bank secrecy laws. The Committee intends that the mandatory provisions contained in Section 404 of the bill override conflicting foreign law.

The Committee recognizes that the bill would preempt State laws that accord privacy rights beyond those available under federal law. The Committee undertakes legislation involving such preemption cautiously. However, the FBI has provided to the Committee information showing that the number of requests it makes per year for financial records in foreign counterintelligence investigations is relatively small. Given the limited number of requests, given that most of the requests pertain to non-United States persons, and given the inclusion in the bill of an explicit standard and a provision for oversight review, the Committee believes that the amendment to the RFPA is justified and reasonable.

The bill adopts the definitions of "foreign power" and "agent of a foreign power" in the Foreign Intelligence Surveillance Act of 1978. That Act provides that "no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment" (50 U.S.C. 1805(a)(3)(A)). The Committee intends that the same limitation will govern application of the mandatory provisions contained in Section 404 of the bill.

Section 404 of the bill amends Section 1114(a) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a) by adding to it a new paragraph (5).

Paragraph 1114(a)(5)(A) as added by Section 404 provides that financial institutions shall comply with an FBI request for access to financial records upon receiving the certificate in writing of the Director of the FBI (or the Director's designee) that the FBI seeks the records for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power as defined in the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801). The provision provides for mandatory access to financial records not only of a "customer" (which under the limited definition in Section 1105 of the RFPA includes only individuals and partnerships of five or fewer individuals), but also to records of an "entity," which includes all forms of organization, such as partnerships, associations, corporations, and governments. The term "foreign counterintelligence purposes" includes both the purpose of countering the intelligence activities of

foreign powers and their agents and the purpose of countering international terrorism activities.

The Committee urges that, if the Director of the FBI delegates his function under this provision for mandatory access, he will delegate it no further down the FBI chain of command than the level of Assistant Director.

The new mandatory FBI authority for counterintelligence access to records is in addition to, and leaves in place, the existing non-mandatory scheme for FBI access under Section 1114(a)(1). Although the existing FBI non-mandatory authority under Section 1114(a) to request a customer's financial records for counterintelligence activities apparently implicitly requires only that such records be relevant to such activities regardless of the status or activities of the customer, the Committee believes it important in establishing the additional authority for mandatory FBI access to limit that mandatory authority to use only to obtain a customer's or entity's records when there are specific and articulate facts giving reason to believe that the customer is a foreign power or an agent of a foreign power. The Committee notes that the requirement of "reason to believe" that the customer is a foreign power or an agent of a foreign power is less stringent than the requirement of "probable cause" to believe that the customer is a foreign power or an agent of a foreign power. Statutes and executive orders governing intelligence activities have used the "probable cause" standard when intelligence methods or techniques the government proposes to use intrude into zones of privacy protected by the fourth amendment. Since, as the *Miller* case held, governmental access to a customer's financial records held by a bank does not implicate a constitutionally protected right of privacy, the Committee concluded that the "probable cause" standard was not warranted. Nevertheless, the Committee believed that satisfaction of an elevated standard should be a predicate for mandatory FBI access to financial records, in light of the judgment of the Congress embodied in the RFPA that financial records should be afforded a measure of privacy against governmental inquiry and because the federal government would be preempting State laws that go beyond federal law in affording privacy protections to a class of records. Accordingly, the Committee agreed to require a determination that there are specific and articulable facts giving "reason to believe" that the customer or entity whose records the FBI seeks is a foreign power or an agent of a foreign power.

In formulating paragraph 1114(a)(5), the Committee carefully considered whether to grant the FBI mandatory access to financial records for foreign counterintelligence purposes upon a determination that there are specific and articulable facts giving reason to believe that an individual *is or may be* a foreign power or an agent of a foreign power. The Committee decided, however, to require a determination that there are specific and articulable facts giving reason to believe that an individual *is* a foreign power or an agent of a foreign power. The broader formulation provides an unwarranted degree of latitude, given the evidentiary latitude which already inheres in the "reason to believe" standard itself. The Committee was also concerned that, if the phrase "or may be" were included in the provision, the FBI might be able to request mandato-

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ry access to an individual's financial records based merely upon information that he is the target of a recruitment effort of a hostile foreign power. By not including the phrase "or may be" in the provision, the Committee ensures that the mandatory access provision cannot be used to obtain the financial records of an individual solely because he is the target of recruitment by a hostile foreign power. Evidence, no matter how substantial and credible, that the individual is the target of a recruitment effort of a hostile foreign power cannot alone suffice to constitute the requisite reason to believe that he is an agent of a foreign power. There must be some indication that the individual has engaged or will engage in conduct on behalf of the foreign power.

Paragraph 1114(a)(5)(B) of the RFPA as added by Section 404 of the bill provides that the FBI may disseminate information obtained pursuant to the mandatory access provisions only as provided in the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations, and, with respect to dissemination to an agency of the United States, such as another federal law enforcement or intelligence agency, only if the FBI determines that such information is clearly relevant to the authorized responsibilities of such agency. The requirement of clear relevancy for dissemination to another federal agency ensures that the FBI will not automatically and routinely disseminate information the FBI obtains from a customer's or entity's financial records using the mandatory procedures.

Paragraph 1114(a)(5)(C) of the RFPA as added by Section 404 of the bill requires that the Attorney General report semiannually to the intelligence committees of the Congress concerning all FBI requests for access to financial records made pursuant to the mandatory provisions added to the RFPA by Section 404. The Committee expects to review such requests closely. This reporting requirement is in addition to the requirements contained in Title V of the National Security Act of 1947, which concerns congressional oversight of intelligence activities.

Paragraph 1114(a)(5)(D) ensures that no financial institution, or officer, employee, or agent of such institution, will disclose to anyone that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under the mandatory access provisions. The effective conduct of FBI counterintelligence activities requires such non-disclosure. The Committee expects the FBI, in implementing the new mandatory authority, to ensure that certificates executed pursuant to paragraph 1114(a)(5)(A) by the Director of the FBI (or his designee) and shown to a financial institution to gain access to records, remain on file with the FBI, both to satisfy internal and congressional oversight needs and to provide protection from any possible legal liability for the financial institution.

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TITLE V—ADMINISTRATIVE AUTHORITIES RELATING TO INTELLIGENCE PERSONNEL

Section 501: DIA Civilian Medical Evacuation Benefit

Section 501 of the bill extends to DOD civilian personnel assigned to Defense Attache Offices and DIA Liaison Offices abroad a medical evacuation travel expenses benefit currently available to United States Foreign Service personnel, CIA personnel, and certain DOD special cryptologic activities personnel. Under Section 901(5) of the Foreign Service Act of 1980 (22 U.S.C. 4081(5)), the Secretary of State may pay the travel and related expenses of members of the Foreign Service and their families, including costs or expenses incurred for:

> (5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care (without regard to those laws and regulations limiting or restricting the furnishing or payment of transportation and traveling expenses), as well as expenses for—
>
> (A) an attendant or attendants for a member of the Service or a family member who is too ill to travel unattended or a family member who is too young to travel alone, and
>
> (B) a family member incapable of caring for himself or herself if he or she remained at the post at which the member of the Service is serving; * * *.

Similarly, under Section 4(b)(1) of the CIA Act of 1949 (50 U.S.C. 403e(4)(b)(1)), which authorizes the Director of Central Intelligence to pay to CIA personnel allowances and benefits comparable to those paid to Foreign Service personnel, the CIA may pay travel and related expenses for medical evacuation of CIA personnel abroad. In addition, under Section 9(b)(1) of the National Security Agency Act of 1959 (50 U.S.C. 402 note), which authorizes the Director, NSA to pay to DOD special cryptologic activities personnel abroad allowances and benefits comparable to those paid to Foreign Service personnel, the Director, NSA may pay travel and related expenses for medical evacuation of such DOD personnel.

Subsection 1605(a) of title 10, United States Code currently authorizes the Secretary of Defense to pay to DOD civilian personnel assigned abroad in Defense Attache Offices and Defense Intelligence Agency Liaison Offices allowances and benefits comparable to those paid to Foreign Service personnel under specified sections of the Foreign Service Act of 1980, not including subsection 901(5) of that Act (22 U.S.C. 4081(5)), which authorizes the Secretary of State to pay medical evacuation travel expenses of Foreign Service personnel. Accordingly, unlike Foreign Service, CIA and DOD special cryptologic activities personnel serving abroad, DOD civilian personnel serving in Defense Attache Offices and DIA Liaison Offices must pay their own medical evacuation travel expenses.

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To ensure equity of benefits among the personnel of the various U.S. intelligence agencies performing their duties abroad in substantially similar circumstances, the Committee concluded that DOD civilian personnel serving in Defense Attache Offices and DIA Liaison Offices should receive the same medical evacuation travel expenses benefit that Foreign Service, CIA, and certain DOD special cryptologic activities personnel receive. Accordingly, Section 501 of the bill amends subsection 1605(a) of title 10, United States Code to extend the benefit to DOD civilian personnel serving in Defense Attache Offices and DIA Liaison Offices.

Given that only a few DOD civilian personnel serving in Defense Attache Offices and DIA Liaison Offices at isolated locations abroad have required medical evacuation in the past, the Committee expects that use of the authority granted by Section 501 of the bill will not result in large expenditures.

Section 502: One Year Extension of DIA Special Termination Authority

Section 502 of the bill extends for one more fiscal year the extraordinary authority of the Secretary of Defense to terminate a Defense Intelligence Agency civilian employee without regard to normal federal personnel termination procedures.

Section 501 of the Intelligence Authorization Act for Fiscal Year 1985 (P.L. 98-618) enacted Section 1604 of title 10, United States Code, relating to DIA civilian personnel management. Subsection 1604(e) of Title 10 granted to the Secretary of Defense authority during fiscal years 1985 and 1986 to terminate the employment of any DIA civilian employee whenever he considers it to be in the interest of the United States and he determines that normally applicable federal employment termination procedures cannot be invoked in a manner consistent with national security. Section 502 of the bill would extend this authority for fiscal year 1987, a one-year extension instead of the two-year extension requested by the executive branch.

When the provision which became Section 1604(e) was offered as part of an amendment in the nature of a substitute on the floor of the other body, the accompanying explanation of the amendment stated with respect to subsection 1604(e):

> The Committee amendment specifies that the termination authority shall expire on September 30, 1986. This limited duration is designed to provide Congress with the opportunity to assess the use made of the authority during a two year period in order that an informed decision can be made as to whether the authority should be made permanent. (130 *Cong. Rec.* S14261 (daily ed., October 11, 1984))

The Department of Defense did not promulgate the DOD regulations and delegations of authority necessary to implement Section 1604(e) until a year and a half after Congress granted this extraordinary termination authority to the Secretary of Defense. The failure of the Department of Defense to issue implementing regulations to permit use of the authority during the initial fiscal years

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1985 and 1986 test period indicates to the Committee that there may not have been any real need, and certainly was no urgent need, for the Department of Defense to possess extraordinary authority to terminate DIA civilian employees. Nevertheless, in an effort to provide the "opportunity to assess the use made of the authority * * * in order that an informed decision can be made as to whether the authority should be made permanent," the Committee has decided to extend the authority for fiscal year 1987.

The Committee notes that failure in the future of intelligence agencies to implement in a timely and effective fashion the special authorities they request from Congress from time to time will undoubtedly result in increased Congressional skepticism of the need for such new authorities.

Section 503: Acceptance of Director of Central Intelligence Awards by Military Intelligence Personnel

Section 503 of the bill ensures that military intelligence personnel may accept Director of Central Intelligence performance awards on the same basis as civilian personnel of intelligence agencies may accept such awards.

Section 4503(2) of Title 5 of the United States Code provides that the head of an agency "may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who— * * * (2) performs a special act or service in the public interest in connection with or related to his official employment." Section 4503 provides for awards only to an "employee," which as defined in Section 4501 of Title 5, includes only civilian federal employees. Section 402 of the Intelligence Authorization Act for Fiscal Year 1984 authorized the Director of Central Intelligence to exercise the authority provided in Section 4503 of Title 5 with respect to military personnel detailed or assigned to the CIA or the Intelligence Community Staff.

Section 503 of the bill amends Section 402 of the FY 1984 Intelligence Authorization Act to extend the Director's awards authority applicable to civilian federal employees, and military personnel assigned or detailed to the CIA or the Intelligence Community Staff, to include military personnel assigned to foreign intelligence duties outside the CIA or the Intelligence Community Staff. The term "foreign intelligence" as used in Section 402(c) in referring to military personnel assigned to foreign intelligence duties is used in its generic sense to include all types of foreign intelligence duties, such as positive intelligence collection, counterintelligence collection and activities, and analysis.

The extension of the Director's authority under the amendment made by Section 503 of the bill will, among other things, allow military personnel assigned to the intelligence elements of the Department of Defense to participate in the Intelligence Community Exceptional Collector National HUMINT Award Program, established by the Director of Central Intelligence under Section 4503(2) of Title 5, on an equal footing with civilian personnel performing the same duties.

The amendment to Section 402 of the FY 1984 Intelligence Authorization Act made by Section 503 of the bill also provides that

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Director of Central Intelligence awards authorized by Section 4503 of Title 5 or pursuant to Section 402 of that Act may be paid and accepted without regard to Section 5536 of title 5, which prohibits additional compensation for the performance of duties by federal civilian and military personnel without specific legislative and appropriations act authorizations.

The Committee is aware of the general policy that military personnel are not eligible to receive monetary awards for extraordinary performance. After carefully considering this policy in light of national intelligence needs, the Committee concluded that the purpose of the Director of Central Intelligence awards, i.e., creation of a special incentive for extraordinary performance by intelligence personnel in meeting national intelligence needs by establishing a small number of substantial cash awards for extraordinary intelligence service, justifies permitting a member of the armed forces to be eligible to receive a cash award in addition to normal pay and allowances on the same basis as his civilian counterparts doing identical work. The Committee notes that the small number of awards authorized by the Director of Central Intelligence prevents the awards program from becoming a substantial outlay drawing on scarce intelligence resources.

The amendment to Section 402 of the FY 1984 Intelligence Authorization Act made by Section 503 of the bill also provides that the Director of Central Intelligence awards authorized by Section 4503 of Title 5 or pursuant to Section 402 of that Act may be paid and accepted without regard to the death, separation, or retirement of the employee or the member of the Armed Forces whose conduct gave rise to the award, or the assignment of such member to duties other than foreign intelligence duties. Thus the subsequent death or change in status of an employee or member of the the armed forces does not disqualify the employee or member (or the employee's or member's estate) from receiving the award for which he would otherwise have been eligible, a problem which arises due to the lag time between an individual's performance of extraordinary service and the Director's approval of the award for that service, or due to the lag time between the Director's approval of the award and issuance of the funds to the individual representing the award.

Section 504: Management of Civilian Intelligence Personnel of the Military Departments

Section 504 of the bill enacts a new Section 1590 in Title 10 of the United States Code to authorize the Secretary of Defense to provide for management of civilian intelligence personnel of the military departments, notwithstanding certain civil service laws. The provision is based on Section 1604 of Title 10, enacted in 1984, which grants similar authority to the Secretary of Defense with respect to Defense Intelligence Agency civilian personnel. Section 504 brings civilian intelligence personnel in the military departments within the same type of personnel management system as applies to civilians in the rest of the elements of the Intelligence Community. In the aggregate, the provision affects only a very small fraction of the total Army, Navy, and Air Force civilian workforces (es-

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timated personnel affected Army—2692; Navy—1377; Air Force—1671). Although the affected population is small, it performs vital national and departmental intelligence functions.

Granting the Secretary of Defense authority for personnel management of Army, Navy, and Air Force civilian intelligence personnel will improve the quality of intelligence collection and production within the military departments by improving the ability of their intelligence elements to attract and retain skilled civilian intelligence personnel. The military departments have advised the Committee that, due to civil service regulations and policies promulgated by the Office of Personnel Management which do not sufficiently take account of the special needs for management of their civilian intelligence personnel, the military departments often cannot retain intelligence professionals within their specialties or promote them to higher-grade General Schedule positions. The Committee notes that the Office of Personnel Management General Schedule 132 intelligence position classification standards series (GS-132-0), which currently applies to positions for civilian intelligence personnel in the military departments, was issued by the Civil Service Commission (OPM's predecessor) in April 1960.

According to the military departments, to promote an intelligence specialist to a higher-grade position, they often must make the specialist a manager with supervisory responsibility. The military departments find that their inability to keep civilian intelligence specialists within their specialties and offer them the possibility of promotion creates substantial management difficulties and discourages specialists from remaining with the military departments in their specialties. The military departments find this shortcoming particularly damaging with respect to their intelligence analysts and their human intelligence (HUMINT) collection case officers, specialties in which longevity and experience are essential to superior performance.

The military departments have advised the Committee that, under current civilian personnel management constraints, they have difficulty retaining their skilled civilian intelligence personnel in light of opportunities elsewhere in government. The military departments state that they have experienced a significant outflow of their trained civilian personnel to the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency in part because those agencies already enjoy the civilian personnel management flexibility the military departments seek and can therefore offer more attractive career development opportunities. Thus, the military departments spend significant time and fiscal resources to recruit, clear, and train civilian intelligence personnel, only to lose them to other intelligence agencies. The military departments expect to avoid significant recruitment, clearance and training costs as a result of increased civilian personnel retention under the new personnel management systems permitted by Section 504 of the bill.

The Department of the Navy's recent difficulties in recruiting and retaining civilian intelligence personnel illustrates the difficulties the military departments face. The Department of the Navy informed the Committee that, during the past two years, the Naval Intelligence Command has had difficulty recruiting qualified appli-

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cants in the electronic engineer, electrical engineer, and computer science fields. In one specific instance, the Naval Intelligence Support Center interviewed 32 people for a computer science position and made offers to 17 candidates without success. Of the 17, five took positions with the National Security Agency and two took positions with the Central Intelligence Agency, for salaries in the $24,000 to $26,000 range. The Naval Intelligence Support Center was able to offer a maximum salary of only $17 824 to those individuals. The Naval Intelligence Support Center also has attempted unsuccessfully for over a year to fill four positions involving analysis of foreign communications antennae and equipment and of missile guidance systems. During the past three years, the Naval Intelligence Command has lost 92 analysts in grades GS–11 through GS–14 to the Defense Intelligence Agency, the Central Intelligence Agency, and the National Security Agency. According to the Navy, most of the individuals involved in this outflow to other intelligence agencies were employees at the GS–11 level (20 individuals) and at the GS–12 level (49 individuals) who left solely because of the greater promotional opportunities at DIA, CIA, and NSA. In one case, a GS–12 Naval Intelligence Support Center analyst left for a GS–14 position at NSA.

As a general matter, inability to retain experienced civilian personnel has an especially detrimental effect in the military departments due to the personnel practice of the armed forces of rotating military personnel into and out of intelligence assignments in the military departments. Because the military personnel rotate so frequently, the military departments must rely upon their civilian intelligence personnel to provide the element of continuity essential to the effective performance of intelligence functions. Accordingly, retention of civilian intelligence personnel takes high priority within the military departments' intelligence programs.

The Committee notes that Section 504 of the bill would permit the Secretary of Defense to create separate Army, Navy, and Air Force civilian intelligence personnel management systems. Alternatively, Section 504 would permit the Secretary, exercising his authority under Section 1590 of Title 10 as enacted by Section 504 in combination with his authority under Section 1605 of Title 10 with respect to DIA civilians and under the National Security Agency Act of 1959 (50 U.S.C. 402 note) with respect to NSA civilians, to consolidate the civilian intelligence personnel management systems of some or all of these DOD intelligence components if he deems it advisable.

Section 504(a) of the bill would amend Title 10 of the United States Code by adding a new section 1590 to authorize the Secretary of Defense to provide for management of civilian intelligence personnel of the military departments.

Subsection 1590(a) of Title 10 as contained in Section 504 of the bill authorizes the Secretary of Defense to establish positions for civilian intelligence personnel of the military departments to carry out the intelligence functions of those departments, to appoint individuals to such positions, and to pay those individuals, notwithstanding laws relating to the number, classification, or compensation of employees. The Secretary of Defense thus may exempt civilian intelligence positions in the military departments, and the per-

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sonnel occupying such positions, from the civil service laws relating to numbers, classification and compensation of employees.

Subsection 1590(b) requires the Secretary of Defense, in exercising his authority under subsection 1590(a), to fix the rates of basic pay for military department civilian intelligence personnel positions in relation to the civil service General Schedule rates for positions with corresponding levels of duties and responsibilities. Subsection 1590(b) also sets a ceiling, equal to the highest General Schedule basic pay rate, on the basic compensation of non-Senior Executive Service military department civilian intelligence personnel.

Subsection 1590(c) authorizes the Secretary of Defense to employ prevailing rates systems of basic pay, similar to those prescribed in Subchapter IV of Chapter 53 of Title 5 of the United States Code, for civilian intelligence personnel meeting the description of "prevailing rate employee" contained in Section 5342(a)(2)(A) of Title 5. Section 5342(a)(2)(A) defines as a prevailing rate employee "an individual employed in or under an agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement."

Subsection 1590(d) authorizes payment of allowances based on living costs and conditions of environment to civilian intelligence personnel of the military departments assigned outside the continental United States or assigned in Alaska. Such compensation is in addition to basic compensation and is based upon living costs substantially higher than those in the District of Columbia and/or upon environmental conditions substantially different from those of the lower-48 continental United States if such conditions warrant the additional compensation as a recruitment incentive.

Subsection 1590(e)(1) grants the Secretary of Defense special authority during fiscal year 1987 to terminate a military department civilian intelligence officer or employee whenever he considers it advisable in the interests of the United States and he determines that procedures prescribed in other termination statutes cannot be invoked in a manner consistent with national security. Such decisions by the Secretary are final and not subject to appeal or review outside the Department of Defense. The Secretary of Defense must notify the intelligence committees of the Congress promptly when the special termination authority is exercised. The requirement for notification to the intelligence committees facilitates oversight of the use of the special termination authority and may provide information useful in determining whether to place in permanent law this authority granted for a single fiscal year.

Subsection 1590(e)(2) provides that an officer or employee's termination by the exercise of the special termination authority does not affect his right to seek or accept employment with a federal department or agency (other than that from which he was terminated) if the Director of the Office of Personnel Management declares him eligible for such employment.

Subsection 1590(e)(3) permits the Secretary of Defense to delegate the special termination authority only to the Deputy Secretary of

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Defense and/or the Secretaries of the Military Departments for the personnel of their respective departments. If the Secretary of Defense delegates the authority to his Deputy or to the service secretaries, any termination under such delegation is appealable to the Secretary of Defense.

Section 504(b) of the bill makes a conforming amendment to the table of sections of chapter 81 of Title 10 of the United States Code.

Section 505: NSA Acquisition of Critical Skills

Section 505 of the bill amends the National Security Agency Act of 1959 to authorize the Secretary of Defense to send NSA civilian employees to be students at accredited professional, technical and other institutions of higher learning for training at the undergraduate level. The purpose of Section 505 is to establish an undergraduate training program, including training which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to NSA's mission.

Section 505 is designed to increase the capability of NSA to achieve simultaneously two of its important personnel objectives: (1) ensuring equal employment opportunity within NSA through affirmative action and (2) developing and retaining personnel trained in the skills essential to effective performance of NSA's mission.

The NSA mission demands employees of extraordinary aptitude and strong basic undergraduate training in certain disciplines, such as mathematics, computer science, engineering and foreign languages. The institutions of higher learning in the United States currently do not produce a sufficient pool of such graduates to satisfy the personnel requirements of the private sector and of government agencies. Given the short supply of qualified college graduates in these disciplines, NSA has difficulty satisfying its essential needs for such personnel. Within this general requirement for skilled personnel, the Agency has even greater difficulty recruiting sufficient qualified minority graduates to meet the Agency's obligation to ensure equal employment opportunity through affirmative action. The Agency has difficulty competing with other employers, and particularly private sector employers who can offer more favorable compensation arrangements, to attract these graduates.

Section 505 presents a workable solution to the problem the Agency has in attracting sufficient numbers of high aptitude college graduates, particularly minorities, trained in critical basic disciplines. Under Section 505, the Agency can identify high aptitude high school graduates, with special efforts to identify minority high school students, and offer them NSA employment and an undergraduate education funded by NSA.

Section 505 enacts a new Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) to establish the NSA undergraduate training program.

Subsection 16(a) states the purpose of the section, which is to establish an undergraduate training program, including training which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, and particularly minority high school stu-

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dents, with a demonstrated capability to develop skills critical to NSA's mission.

Subsection 16(b) authorizes the Secretary of Defense to establish the undergraduate training program for NSA civilian personnel. The Committee expects the Secretary to implement this section expeditiously by delegating his authority under this section to the Director, NSA pursuant to Section 133(d) of Title 10 of the United States Code. The NSA will send employees participating in the program to be students at institutions of higher learning with superior programs in disciplines critical to NSA functions. Such assignments normally will contemplate completion of an educational program leading to the institution's awarding the NSA employee a baccalaureate degree. During periods, such as summer vacations, in which the employee's attendance at the institution is not required, the employee will work at NSA installations to gain basic intelligence training and familiarity with the functions of the Agency. Because of the unusual national security functions of the NSA, and the Committee's trust that NSA will administer the training program in a manner faithful to Congressional intent, subsection 505(a) commits the authority granted to the Secretary of Defense to his discretion, which insulates his use of the authority from review under the judicial review provisions of the Administrative Procedures Act (Chapter 7 of Title 5 of the United States Code).

Subsection 16(c) authorizes the National Security Agency to pay expenses incident to employee assignments to institutions under the program. Such expenses include, but are not necessarily limited to, matriculation fees, tuition, library and laboratory fees, and purchase or rental of books, materials and supplies. The Committee notes that, under separate existing statutory authority, the Agency will pay employees participating in the program authorized salaries and allowances, including any applicable travel and transportation allowances. The Agency may pay the authorized expenses incident to an employee assignment under the program directly to the institution to which the employee is sent, or to the employee as reimbursement if the employee has already, with authority to do so, paid the institution. The Agency may only pay expenses incident to employee assignments under the program in any fiscal year to the extent that appropriated funds are available for such purposes, which ensures that Congress will decide the level of resources devoted to the program through the annual authorization and appropriations cycle.

Subsection 16(d)(1) establishes the conditions under which an Agency employee may participate in the NSA undergraduate training program. To be eligible under the program, the employee must sign an agreement including the following four conditions:

(A) The employee must agree to continue to be an Agency employee during the period of his assignment and to complete the educational course of training for which he is assigned.

(B) The employee must agree to continue, after completion of the assignment, to serve as an Agency employee for one-and-a-half years for each partial or whole year of his assignment under the program.

(C) The employee must agree to reimburse the United States for the total cost to date of his education (excluding pay and allow-

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ances) under the program if the employee fails to complete the course of training for which he is assigned due either to the Agency's termination of the assignment or of his employment with the Agency for misconduct, or due to his voluntary termination of that assignment or employment.

(D) The employee must agree to reimburse the United States according to a specified formula for the total cost of his education (excluding pay and allowances) under the program if, after completing the assignment, he fails to complete his NSA service obligation due either to the Agency's termination of his employment with the Agency for misconduct, or due to his voluntary termination of that employment.

An employee who fails to complete his assignment under the program or fails to complete his post-assignment service obligation incurs an obligation to reimburse the United States for educational costs if the employee voluntarily terminates his assignment under the program or his NSA employment, or if the Agency terminates his assignment or employment because of misconduct by the employee. In contrast, if the Agency terminates the assignment or employment of the employee for any reason other than misconduct by the employee, the employee would not incur a reimbursement obligation.

The Committee concluded that, when the Agency terminates the employee's assignment or employment for reasons over which the employee has no control, the employee should not incur a reimbursement obligation. For example, an employee participating in the program whose close relative takes up residence or enters the employment of a hostile foreign power—a matter over which the employee has no control—could cease to meet NSA security clearance requirements, and the Agency would therefore terminate his employment. The employee would not incur a reimbursement obligation in those circumstances. Similarly, an employee sent to an institution under the program who diligently pursues his studies but, despite his best efforts, cannot meet the academic standards set by the institution as a condition of remaining at the institution or as a condition of graduation, would not incur a reimbursement obligation.

In contrast, the Committee believed it important to provide that an employee who voluntarily terminates his assignment or employment incurs a reimbursement obligation, since the employee agreed to complete his educational training and service thereafter with NSA as a condition of eligibility for the program. Thus, for example, an employee who decides to terminate his assignment or employment for his convenience incurs a reimbursement obligation.

The Committee believed it important also to provide that an employee whose assignment or employment the Agency terminates for misconduct incurs a reimbursement obligation. The Secretary of Defense will define misconduct for purposes of Section 16 by regulations issued under Section 16(g), which will ensure that employees participating in the program have fair notice of limitations on their conduct. The Committee expects the Secretary to define misconduct in this context to consist largely of security-relevant intentional adverse conduct (as distinguished from conditions over which

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an individual lacks control, such as mental disorder) described in Director of Central Intelligence Directive 1/14 (effective April 14, 1986) entitled "Minimum Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information."

Subsection 16(d)(2) provides that a reimbursement obligation, and interest on the obligation provided for by Section 3717 of Title 31 of the United States Code, constitute for all purposes a debt owing the United States. The United States may enforce that debt obligation as provided by law, which includes action in accordance with Subchapter II of Chapter 37 of Title 31 of the United States Code. In any administrative or judicial proceeding brought by the United States to enforce a debt obligation of an employee or former employee who participated in the program, the employee will be entitled to raise any legal defense he may have. Thus, for example, if NSA determined that an employee participating in the program engaged in misconduct and terminated his employment for that reason, and thereafter brought a civil action in federal court to recover from the employee the reimbursement due for educational costs, the employee could raise in his defense in the civil action that he did not in fact engage in the alleged misconduct and therefore does not owe reimbursement. If the court found that no misconduct occurred, then the result would be that the employee had no reimbursement obligation, ending the matter. The court would have no authority to review the decision to terminate the NSA employee, nor could the court provide any relief, such as reinstatement of the employee; the court would simply dismiss the civil action brought by the United States. Nothing in Section 16 in any way impairs or affects the special authority of the Secretary of Defense to terminate NSA employees under Section 303 of the Internal Security Act of 1950.

The National Security Agency will deposit in the Treasury any amounts received as reimbursement of educational costs in accordance with Section 3302(b) of Title 31 of the United States Code.

Subsection 16(d)(3)(A) provides that a discharge in bankruptcy does not release a present or former Agency employee who participated in the program from his reimbursement obligation if the discharge decree is issued before five years after the completion of the combined periods for which the employee had agreed to be assigned under the program and had agreed to continue in the service of NSA. In the absence of this provision overriding the bankruptcy laws, an employee might intentionally take advantage of the NSA program with the intention of receiving a free education and then evading his service obligation at no cost to himself by seeking discharge of his reimbursement obligation in bankruptcy proceedings. The likelihood of such an abuse occurring diminishes substantially with the elimination of the possibility of the employee's reimbursement obligation being discharged in bankruptcy before five years after the end of the combined education and service periods to which he agreed.

Subsection 16(d)(3)(B) authorizes the Secretary of Defense to release an employee or former employee who participated in the program from his reimbursement obligation, in whole or in part, when equity or the interests of the United States so require. The Com-

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mittee provided the option for release required by equity to allow for release in hardship cases which render enforcement of the reimbursement obligation unjust. The Committee provided the other release option, for release required by the interests of the United States, for cases in which, even though it would not be unjust to enforce the reimbursement obligation, governmental interests require the release. Such a situation might occur, for example, in certain circumstances when an employee resigns from the Agency voluntarily to take a position with another federal agency. Because the authority to release is committed to the discretion of the Secretary of Defense, his actions relating to decisions to release or not to release are insulated from review under the judicial review provisions of the Administrative Procedures Act (chapter 7 of Title 5, United States Code).

Subsection 16(d)(3)(C) requires the Secretary of Defense to permit an employee assigned to an institution under the program who, prior to commencing a second academic year of such assignment, voluntarily terminates the assignment or his employment with the Agency, to satisfy his reimbursement obligation by a schedule of monthly payments which results in completion of reimbursement by a date five years after the date of termination of the assignment or employment or, if the employee so chooses, at an earlier point in time. The Committee notes that most of the employees entering the program will have attained only seventeen or eighteen years of age and may come from backgrounds in which they have no prior concept of the nature of NSA employment. Although NSA must make every effort to explain the rigors of college and NSA employment to these individuals before they enter into the required service and reimbursement agreement, these individuals may discover early in their assignments that they made in ill-advised decision with respect to college or NSA employment. Accordingly, the Committee believes it appropriate to treat employees who voluntarily terminate their assignment or employment in its early stages more leniently with respect to the timing of reimbursement than employees who voluntarily terminate their assignment or employment later.

Subsection 16(e) requires that, when the Agency sends an employee to attend an institution under the program, the Agency must notify the institution which the employee attends that the Agency employs the employee and that the Agency funds the employee's education. The Committee emphasizes strongly that both NSA and the institutions have an obligation to handle any matters which may arise between them in a manner which fully protects the employee's personal privacy interests and his interests as a student at the institution. The Committee notes that institutions receiving information concerning an employee student from NSA under this provision must handle that information in accordance with the educational privacy rights of the employee student as provided in Section 1232g of Title 20 of the United States Code. The Committee notes also that representatives of the National Security Agency have explicitly assured the Committee that the Agency has no need and no interest in sending NSA employees to participate in the program under cover, and that NSA employees attending an

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institution under the program will have no intelligence function whatever to perform at that institution.

Subsection 16(f) provides that Chapter 41 of Title 5 and subsections (a) and (b) of Section 3324 of Title 31 of the United States Code do not apply with respect to the NSA undergraduate training program and its administration. Chapter 41 of Title 5 contains various restrictions concerning training programs for federal civilian employees which would be inconsistent with effective administration of the NSA undergraduate training program and achievement of the associated legislative goals. Subsections (a) and (b) of Section 3324 of Title 31 limit the circumstances in which an agency may pay for a service or good in advance of delivery or may advance funds to an employee. These limitations also would be inconsistent with effective administration of the program.

Subsection 16(g) authorizes the Secretary of Defense to issue such regulations as may be necessary to implement Section 16. The Committee expects the Secretary to hew closely to the legislative purpose embodied in subsection 16(a) in developing and issuing such regulations.

Section 506: CIA Acquisition of Critical Skills

Section 506 of the bill requires the Director of Central Intelligence, exercising the authority granted by Section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), to establish a program to send CIA civilian employees to be students at accredited professional, technical and other institutions of higher learning for training at the undergraduate level. The purpose of Section 506 is to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to CIA's mission. The program established by the Director will have the same purpose, conditions, content, and administration as the program which the Secretary of Defense is authorized to establish under Section 16 of the National Security Act of 1959 (50 U.S.C. 402 note), as amended by Section 505 of the bill, for civilian employees of the National Security Agency.

The Central Intelligence Agency, like the National Security Agency, has experienced difficulty in attracting to CIA employment sufficient numbers of college graduates, and particularly minority graduates, qualified in skills essential to effective performance of the CIA mission, such as mathematics, computer science, engineering, and foreign languages. The program established by the DCI will address this difficulty in the same manner as the NSA program.

Unlike the National Security Agency, the CIA currently possesses the statutory authority necessary to establish an undergraduate training program. Section 8(a) of the CIA Act provides in part that:

> Notwithstanding any other provision of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including—(1) personal services, including personal services without regard to limitations on types of persons to be employed * * *.

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Although this broad general grant of authority would permit CIA to establish the undergraduate training program, the Committee concluded that, in the interest of clarity in defining relationships between CIA and the U.S. academic community, a statute specifically addressing the program would be appropriate. Section 506 specifically provides for a CIA undergraduate training program with the same purpose, conditions, content, and administration as the NSA program. Among other things, this ensures that, when the CIA sends an employee to an institution under the program, the CIA must notify the institution to which the employee is assigned that the CIA employs the employee and that the CIA funds the employee's education.

Section 506, which requires the Director of Central Intelligence to establish the undergraduate training program, does not impair the authority granted by Section 8 of the Central Intelligence Agency Act of 1949.

The Committee's explanation of, and intent with respect to, Section 16 of the NSA Act, as set forth in this report, applies also to Section 506 of the bill.

TITLE VI—MISCELLANEOUS

Section 601: Defense Mapping Agency Exchange Agreements

Section 601 provides clear, permanent authority for the Defense Mapping Agency to engage in the exchange of mapping, charting and geodetic data with foreign countries and international organizations pursuant to international agreements.

The Defense Mapping Agency (DMA) provides mapping, charting and geodetic support and services to Department of Defense components through the production and distribution of maps, charts, precise positioning data, and digital data for strategic and tactical military operations and weapons systems. In carrying out these responsibilities, the DMA cooperates with many foreign countries under executive international agreements. These agreements generally provide for (1) exchange of mapping, charting and geodetic data, (2) co-production and collection of mapping, charting and geodetic data, (3) no-cost loans of DMA mapping, charting and geodetic equipment, (4) training, and (5) access to foreign territory either by DMA or third country personnel. The United States receives great value from these activities, including receiving maps, charts, and other publications, scientific information, and computer-usable digital data produced in accordance with DMA specifications.

Due to concern about the legal status of some of the executive agreements under which DMA cooperates with foreign countries and international organizations, the Congress enacted Section 8091 of the Department of Defense Appropriations Act, 1986, incorporated in the Further Continuing Appropriations Resolution for FY 1986 (P.L. 99-190), which made DOD appropriations during FY 1986 available for DMA international cooperation activities pursuant to such agreements. Section 601 of the bill provides clear and permanent statutory authority for DMA cooperation with foreign countries and international organizations and for the agreements under which that cooperation takes place.

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The Committee notes that the requirements contained in Section 112b of Title 1 of the United States Code (relating to reporting international agreements to Congress) apply to the agreements under which DMA cooperation with foreign countries and international organizations takes place, in the same manner and to the same extent to which Section 112b applies to other international agreements.

Section 602: Notice to Congress of Certain Transfers of Defense Articles and Defense Services

Section 602 adds a new Section 503 to the National Security Act of 1947 to specify that a covert arms transfer involving a single article or service of a value exceeding $1 million is a "significant anticipated intelligence activity" for purposes of section 501 of that Act, thus making explicit the requirement for the executive branch to give prior notice to the intelligence committees of the Congress of such a transfer. Section 602 makes permanent the provision of the FY 1986 Intelligence Authorization Act (P.L. 99-169) concerning arms transfers which applied during fiscal year 1986. The Committee's report accompanying the FY 1986 bill explains the provisions of, and the need for, the covert arms transfer notification legislation in detail (H. Rept. 99-106, part 1, pp. 9-12).

As noted in the joint explanatory statement of managers accompanying the conference report on the FY 1986 Intelligence Authorization Act (H. Rept. 99-373, p. 20), the Committee and its counterpart in the other body had been engaged for a long time with the executive branch in a cooperative process designed to produce mutual understandings of the term "significant anticipated intelligence activity" as used in Section 501 of the National Security Act of 1947 as it concerns covert action, and in particular covert arms transfers. At the time of the conference on the FY 1986 Intelligence Authorization Act, the intelligence committees anticipated expeditious completion of the process and noted that they expected fulfillment of the understandings reached through that process to obviate any future need to define further in statute the term "significant anticipated intelligence activity."

The anticipated completion of the process did not materialize. Although Committee representatives and executive branch representatives reached agreement on a document expressing mutual understandings, the executive branch never completed its consideration of the document for final approval. The Committee has awaited patiently an executive branch response for months. The Committee can only conclude that the executive branch apparently has lost interest in the cooperative process.

Accordingly, the Committee believes that, in the absence of a permanent mutual understanding, it is necessary to place the understanding relating to covert arms transfers, established in statute last year for fiscal year 1986, in permanent law.

Section 603: Covert Agent Disclosure Federal Pension Forfeiture

Section 603 of the bill amends Section 8312 of title 5, United States Code, to provide that an individual convicted of the offense

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of disclosing the identities of U.S. covert intelligence agents forfeits federal employee retirement benefits.

Section 8312 of title 5 currently provides for forfeiture of federal employee retirement benefits upon conviction for most national security crimes, such as treason, espionage, sabotage and disclosure of atomic energy secrets. Section 603 modifies the list in Section 8312 of national security crimes disqualifying an individual from receiving federal employee retirement benefits to include offenses under Section 601 of the National Security Act of 1947 (50 U.S.C. 421), which was enacted by the Intelligence Identities Protection Act of 1982 (Public Law 97-200). The Identities Act defined as a federal offense the disclosure of the identities of covert U.S. intelligence agents. Neither a convicted individual, nor an individual who might receive benefits based on the service of the convicted individual (i.e., survivor or beneficiary), would receive federal retirement benefits based on the service of the convicted individual.

The Committee concluded that federal employees who occupy positions of trust with the Federal Government, in which they may learn the identities of U.S. covert intelligence agents, assume voluntarily a grave responsibility to protect the secrecy of the identities of those agents. Federal employees who breach that trust and are convicted of Identities Act offenses should not receive taxpayer-financed pension benefits based on their federal service.

The amendment made by Section 603 for forfeiture of federal retirement benefits upon conviction for the offense of disclosure of the identity of a covert agent will apply only with respect to an individual who commits the offense after the date of enactment of this Act, as required by Article I, section 9, clause 3 of the Constitution (the "*ex post facto*" clause).

Committee Position

On July 17, 1986, the Permanent Select Committee on Intelligence, a quorum being present, approved the bill and by voice vote ordered it favorably reported.

Oversight Findings

With respect to clause 2(l)(3)(A) of Rule XI of the House of Representatives, the committee has held extensive hearings regarding the nature and conduct of the intelligence and intelligence-related activities of the U.S. Government in considering this legislation. This review is outlined under the section of this report describing the scope of the committee review. A wide range of recommendations regarding intelligence programs and their management has been included within the classified annex to this report.

Fiscal Year Cost Projections

With respect to clause 2(l)(3)(B) of Rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this legislation does not provide new budget authority or tax expenditures. The committee has attempted pursuant to clause 7(a)(1) of Rule XIII of the Rules of the House of Representatives to ascertain the outlays which will occur in fiscal year 1987 and the 5

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years following if these amounts are appropriated. These estimates are contained in the classified annex and are in accordance with those of the executive branch.

Congressional Budget Office Estimate

With respect to clause 2(l)(3)(C) of Rule XI of the House of Representatives, the committee has received no report from the Congressional Budget Office.

Recommendations of the Committee on Government Operations

With respect to clause 2(l)(3)(D) of Rule XI of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to the subject of this bill.

Inflation Impact Statement

Pursuant to clause 2(l)(4) of Rule XI of the House of Representatives, the committee has attempted to determine the inflationary impact of the bill.

The committee finds no adequate method to identify the inflationary impact of the present legislation. Further, the bill does not provide specific budget authority but rather authorizations for appropriation. Hence, any inflationary impact would depend on the amounts actually appropriated and the strain that short supplies of materials, production capacity or other economic resources would place on industrial capacity.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Central Intelligence Agency Retirement Act of 1964 for Certain Employees

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TITLE II—THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

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Part C—Computation of Annuities

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SURVIVOR BENEFITS FOR CERTAIN OTHER FORMER SPOUSES

Sec. 224. (a)(1) Any individual who was a former spouse of a participant or former participant on November 15, 1982, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b), to a survivor annuity equal to 55 percent of the greater of—

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(A) the full amount of the participant's or former participant's annuity, as computed under section 221(a); or

(B) the full amount of what such annuity as so computed would be if the participant or former participant had not withdrawn a lump-sum portion of contributions made with respect to such annuity.

(2) A survivor annuity payable under this section shall be reduced by an amount equal to the amount of retirement benefits, not including benefits under title II of the Social Security Act, received by the former spouse which are attributable to previous employment of such former spouse by the United States.

(b) A former spouse shall not be entitled to a survivor annuity under this section if—

(1) an election has been made with respect to such former spouse under section 223;

(2) the former spouse remarries before age 55; or

(3) the former spouse is less than fifty years of age.

(c)(1) The entitlement of a former spouse to a survivor annuity under this section—

(A) shall commence—

(i) in the case of a former spouse of a participant or former participant who is deceased as of the effective date of this section, beginning on the later of—

(I) the 60th day after such date; or

(II) the date such former spouse reaches age 50; and

(ii) in the case of any other former spouse, beginning on the latest of—

(I) the date that the participant or former participant to whom the former spouse was married dies;

(II) the 60th day after the effective date of this section; or

(III) the date such former spouse reaches age 50; and

(B) shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 55.

(2)(A) A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may be regulation require, within 30 months after the effective date of this section.

(B) Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before the effective date of this section.

(d) The Director shall—

(1) as soon as possible, but not later than 60 days after the effective date of this section, issue such regulations as may be necessary to carry out this section; and

(2) to the maximum extent practicable, and as soon as possible, inform each individual who was a former spouse of a par-

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ticipant or former participant on November 15, 1982, of any rights which such individual may have under this section.

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CENTRAL INTELLIGENCE AGENCY ACT OF 1949

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RETIREMENT EQUITY FOR SPOUSES OF CERTAIN EMPLOYEES

SEC. 14. (a) The provisions of sections 204, 221(b) (1)–(3), 221(f), 221(g)(2), 221(l), 221(m), 221(n), 221(o), 222, 223, *224*, 234(c), 234(d), 234(e), and 263(b) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) establishing certain requirements, limitations, rights, entitlements, and benefits relating to retirement annuities, survivor benefits, and lump-sum payments for a spouse or former spouse of an Agency employee who is a participant in the Central Intelligence Agency Retirement and Disability System shall apply in the same manner and to the same extent in the case of an Agency employee who is a participant in the Civil Service Retirement and Disability System.

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HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES OF CIA EMPLOYEES

SEC. 16. (a) Except as provided in subsection (c)(1), any individual—

(1) formerly married to an employee or former employee of the Agency, whose marriage was dissolved by divorce or annulment before May 7, 1985;

(2) who, at any time during the 18-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

(3) who was married to such employee for not less than 10 years during periods of service by such employee with the Agency, at least five years of which were spent outside the United States by both the employee and the former spouse,

is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

(b)(1) Any individual eligible for coverage under subsection (a) may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the 6-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulation prescribe, such individual—

(A) files an election for such enrollment; and

(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5, United States Code an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

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(2) The Director of Central Intelligence shall, as soon as possible, take all steps practicable—

(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a); and

(B) to notify each such former spouse of that individual's rights under this section.

(3) The Director of the Office of Personnel Management, upon notification by the Director of Central Intelligence, shall waive the 6-month limitation set forth in paragraph (1) in any case in which the Director of Central Intelligence determines that the circumstances so warrant.

(c)(1) Any former spouse who remarries before age 55 is not eligible to make an election under subsection (b)(1)

(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age 55 shall not be eligible for continued enrollment under this section after the end of the 31-day period beginning on the date of remarriage.

(d) No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

(e) For purposes of this section the term "health benefits plan" means an approved health benefits plan under chapter 89 of title 5, United States Code.

TITLE 28, UNITED STATES CODE

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PART II—DEPARTMENT OF JUSTICE

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CHAPTER 33—FEDERAL BUREAU OF INVESTIGATION

Sec.
531. Federal Bureau of Investigation.

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539. Counterintelligence Official Reception and Representation Expenses.

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§ 539. Counterintelligence Official Reception and Representation Expenses.

"The Director of the Federal Bureau of Investigation may use funds available to the Federal Bureau of Investigation for counterintelligence programs to pay the expenses of hosting foreign officials

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in the United States under the auspices of the Federal Bureau of Investigation for consultation on counterintelligence matters.

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TITLE 10, UNITED STATES CODE

Subtitle A—General Military Law

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PART I—ORGANIZATION AND GENERAL MILITARY POWERS

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CHAPTER 4—DEPARTMENT OF DEFENSE

Sec.
131. Executive department.

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140d. Counterintelligence Official Reception and Representation Expenses.
140e. Authority to Use Proceeds from Counterintelligence Operations of the Military Departments.

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§ 140d. Counterintelligence Official Reception and Representation Expenses

The Secretary of Defense may use funds available to the Department of Defense for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Department of Defense for consultation on counterintelligence matters.

§ 140e. Authority to Use Proceeds from Counterintelligence Operations of the Military Departments

(a) The Secretary of Defense may authorize, without regard to the provisions of section 3302 of title 31, United States Code, use of proceeds from counterintelligence operations conducted by components of the military departments to offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, and to make awards to personnel involved in such operations, if use of appropriated funds to meet such expenses or to make such awards would not be practicable.

(b) As soon as the net proceeds from such counterintelligence operations are no longer necessary for the conduct of those operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management and disposition of proceeds from counterintelligence operations conducted by components of the military departments, including effective internal systems of accounting and administrative controls.

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PART II—PERSONNEL

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CHAPTER 81—CIVILIAN EMPLOYEES

Sec.
1583. Employment of certain persons without pay.

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1590. Management of Civilian Intelligence Personnel of the Military Departments.

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§ 1590. Management of Civilian Intelligence Personnel of the Military Departments

(a) The Secretary of Defense may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees—

(1) establish such positions for civilian intelligence officers and employees of the military departments as may be necessary to carry out the intelligence functions of such departments;

(2) appoint individuals to such positions; and

(3) fix the compensation of such individuals for service in such positions.

(b) The Secretary of Defense shall, subject to subsection (c), fix the rates of basic pay for positions established under subsection (a) in relation to the General Schedule under section 5332 of title 5 for positions subject to such Schedule which have corresponding levels of duties and responsibilities. Except in the case of a civilian intelligence officer or employee of a military department serving as a member of the Senior Executive Service of a military department, no civilian intelligence officer or employee of a military department may be paid basic compensation at a rate in excess of the highest rate of basic pay contained in such General Schedule.

(c) The Secretary of Defense is authorized, consistent with section 5341 of title 5, to adopt such provisions of such title as provide for prevailing rate systems of basic pay and to apply such provisions to positions for civilian intelligence officers or employees in or under which the military departments may employ individuals described by section 5342(a)(2)(A) of such title.

(d) In addition to the basic compensation payable under subsection (b), civilian intelligence officers and employees of the military departments who are citizens or nationals of the United States and who are stationed outside the continental United States or in Alaska may be paid compensation, in accordance with regulations prescribed by the Secretary of Defense, not in excess of an allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute. Such allowances shall be based on—

(1) living costs substantially higher than in the District of Columbia;

(2) conditions of environment which differ substantially from conditions of environment in the continental United States and warrant an allowance as a recruitment incentive; or

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(3) both of the factors described in paragraphs (1) and (2).

(e)(1) Notwithstanding any other provision of law, the Secretary of Defense may, during fiscal year 1987, terminate the employment of any civilian intelligence officer or employee of a military department whenever he considers that action to be in the interests of the United States and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such officer or employee cannot be invoked in a manner consistent with the national security. The decisions of the Secretary under this paragraph are final and may not be appealed or reviewed outside the Department of Defense. The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever this termination authority is exercised.

(2) Any termination of employment under this subsection shall not affect the right of the officer of employee involved to seek or accept employment with any other department or agency of the United States if he is declared eligible for such employment by the Director of the Office of Personnel Management.

(3) The Secretary of Defense may delegate authority under this subsection only to the Deputy Secretary of Defense or the Secretary concerned or both. An action to terminate any civilian intelligence officer or employee of a military department by either such officer shall be appealable to the Secretary of Defense.

CHAPTER 83—DEFENSE INTELLIGENCE AGENCY CIVILIAN PERSONNEL

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§ 1604. Civilian personnel management

(a) * * *

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(e)(1) Notwithstanding any other provision of law, the Secretary of Defense may, during fiscal years [1985 and 1986,] *1986 and 1987,* terminate the employment of any civilian officer or employee of the Defense Intelligence Agency whenever he considers that action to be in the interests of the United States and he determines that the procedures prescribed in other porvisions of law that authorize the termination of the employment of such officer or employee cannot be invoked in a manner consistent with the national security. The decisions of the Secretary under this paragraph are final and may not be appealed or reviewed outside the Department of Defense. The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever this termination authority is exercised.

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§ 1605 Benefits for certain employees of the Defense Intelligence Agency

(a) The Secretary of Defense may provide to civilian personnel of the Department of Defense who are United States nationals, who are assigned to Defense Attaché Offices and Defense Intelligence Agency Liaison Offices outside the United States, and who are designated by the Secretary of Defense for the purposes of this subsection, allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), *(5)*, (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081 (2), (3), (4), *(5)*, (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 167—DEFENSE MAPPING AGENCY

Sec.
2791. Establishment and duties.

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2795. Exchange of Mapping, Charting and Geodetic Data with Foreign Countries and International Organizations.

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§ 2795. Exchange of Mapping, Charting and Geodetic Data with Foreign Countries and International Organizations

The Secretary of Defense may authorize the Defense Mapping Agency to exchange or furnish mapping, charting, and geodetic data, supplies and services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data.

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart G—Insurance and Annuities

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CHAPTER 83—RETIREMENT

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Subchapter II—Forfeiture of Annuities and Retired Pay

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§ 8312. Conviction of certain offenses

(a) * * *

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(c) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 26, 1961:

(1) An offense within the purview of—

(A) section 2272 (violation of specific sections) or 2273 (violation of sections generally of chapter 23 of title 42) of title 42 insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation;

(B) section 2274 (communication of restricted data), 2275 (receipt of restricted data), or 2276 (tampering with restricted data) of title 42; or

(C) section 783 (conspiracy and communication of receipt of classified information) of title 50[.] *or section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to intelligence identities).*

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Subpart H—Access to Criminal History Record Information

CHAPTER 91—ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY PURPOSES

* * * * * * *

§ 9101. Criminal history record information for national security purposes

(a) * * *

(b)(1) Upon request by the Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, *or the Federal Bureau of Investigation,* criminal justice agencies shall make available criminal history record information regarding individuals under investigation by such department, office [or agency], *agency, or bureau* for the purpose of determining eligibility for (A) access to classified information or (B) assignment to or retention in sensitive national security duties. Such a request to a State central criminal history record repository shall be accompanied by the fingerprints of the individual who is the subject of the request if required by State law and if the repository uses the fingerprints in an automated fingerprint identification system. Fees, if any, charged for providing criminal history record information pursuant to this subsection shall not exceed the reasonable cost of providing such information, nor shall they in any event exceed

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those charged to State or local agencies other than criminal justice agencies for such information.

* * * * * * *

(3)(A) Upon request by a State or locality, the Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, *or the Federal Bureau of Investigation* shall enter into an agreement with such State or locality to indemnify and hold harmless such State or locality, and its officers, employees and agents, from any claim against such State or locality, or its officer, employee or agent, for damages, costs and other monetary loss, whether or not suit is instituted, arising from the disclosure or use by such department, office [or agency], *agency, or bureau* of criminal history record information obtained from the State or locality pursuant to this subsection, if the laws of such State or locality, as of the date of enactment of this section, otherwise have the effect of prohibiting the disclosure of such criminal history record information to such department, office, [or agency.] *agency, or bureau.*

(B) When the Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, *or the Federal Bureau of Investigation* and a State or locality have entered into an agreement described in subparagraph (A), and a claim described in such subparagraph is made against such State or locality, or its officer, employee, or agent, the State or locality shall expeditiously transmit notice of such claim to the Attorney General and to the United States Attorney of the district embracing the place wherein the claim is made, and the United States shall have the opportunity to make all determinations regarding the settlement or defense of such claim.

(c) The Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, *or the Federal Bureau of Investigation* shall not obtain criminal history record information pursuant to this section unless it has received written consent from the individual under investigation for the release of such information for the purposes set forth in paragraph (b)(1).

* * * * * * *

SECTION 803 OF THE INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1986

SEC. 803. (a) Within two years after the date of enactment of this Act, the Department of Justice, after consultation with the Department of Defense, the Office of Personnel Management, [and] the Central Intelligence Agency, *and the Federal Bureau of Investigation,* shall report to the appropriate committees of the Congress concerning the effect of section 9101(b)(3) of title 5, United States Code, as added by this Act, including the effect of the absence of indemnification agreements upon States and localities not eligible under section 9101(b)(3) of title 5, United States Code, for such agreements.

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SECTION 1114 OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

SPECIAL PROCEDURES

SEC. 1114. (a)(1) * * *

* * * * * * *

(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(C) On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to this paragraph.

(D) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph.

SECTION 402 OF THE INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1984

ELIGIBILITY FOR INCENTIVE AWARDS

SEC. 402. (a) * * *

* * * * * * *

(c) The Director of Central Intelligence may exercise the authority granted in section 4503(2) of title 5, United States Code, with respect to members of the Armed Forces who are assigned to foreign intelligence duties at the time of the conduct which gives rise to the exercise of such authority.

(d) An award made by the Director of Central Intelligence to an employee or member of the Armed Forces under the authority of Section 4503 of title 5, United States Code or this section may be paid and accepted notwithstanding—

(1) section 5536 of title 5, United States Code; and

(2) the death, separation, or retirement of the employee or the member of the Armed Forces whose conduct gave rise to the

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award, or the assignment of such member to duties other than foreign intelligence duties.

NATIONAL SECURITY AGENCY ACT OF 1959

* * * * * * *

SEC. 16. (a) The purpose of this section is to establish an undergraduate training program, which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to the mission of the National Security Agency, including mathematics, computer science, engineering, and foreign languages.

(b) The Secretary of Defense is authorized, in his discretion, to assign civilian employees of the National Security Agency as students at accredited professional, technical and other institutions of higher learning for training at the undergraduate level in skills critical to effective performance of the mission of the Agency.

(c) The National Security Agency may pay, directly or by reimbursement to employees, expenses incident to assignments under subsection (b), in any fiscal year only to the extent that appropriated funds are available for such purpose.

(d)(1) To be eligible for assignment under subsection (b), an employee of the Agency must agree in writing—

(A) to continue in the service of the Agency for the period of the assignment and to complete the educational course of training for which the employee is assigned;

(B) to continue in the service of the Agency following completion of the assignment for a period of one-and-a-half years for each year of the assignment or part thereof;

(C) to reimburse the United States for the total cost of education (excluding the employee's pay and allowances) provided under this section to the employee if, prior to the employee's completing the educational course of training for which the employee is assigned, the assignment or the employee's employment with the Agency is terminated either by the Agency due to misconduct by the employee or by the employee voluntarily; and

(D) to reimburse the United States if, after completing the educational course of training for which the employee is assigned, the employee's employment with the Agency is terminated either by the Agency due to misconduct by the employee or by the employee voluntarily, prior to the employee's completion of the service obligation period described in subparagraph (B), in an amount that bears the same ratio to the total cost of the education (excluding the employee's pay and allowances) provided to the employee as the unserved portion of the service obligation period described in subparagraph (B) bears to the total period of the service obligation described in subparagraph (B).

(2) Subject to paragraph (3), the obligation to reimburse the United States under an agreement described in paragraph (1), including interest due on such obligation, is for all purposes a debt owing the United States.

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(3)(A) A discharge in bankruptcy under title 11, United States Code, shall not release a person from an obligation to reimburse the United States required under an agreement described in paragraph (1) if the final decree of the discharge in bankruptcy is issued within five years after the last day of the combined period of service obligation described in subparagraphs (A) and (B) of paragraph (1).

(B) The Secretary of Defense may release a person, in whole or in part, from the obligation to reimburse the United States under an agreement described in paragraph (1) when, in his discretion, the Secretary determines that equity or the interests of the United States so require.

(C) The Secretary of Defense shall permit an employee assigned under this section who, prior to commencing a second academic year of such assignment, voluntarily terminates the assignment or the employee's employment with the Agency, to satisfy his obligation under an agreement described in paragraph (1) to reimburse the United States by reimbursement according to a schedule of monthly payments which results in completion of reimbursement by a date five years after the date of termination of the assignment or employment or earlier at the option of the employee.

(e) When an employee is assigned under this section to an institution, the Agency shall disclose to the institution to which the employee is assigned that the Agency employs the employee and that the Agency funds the employee's education.

(f) Chapter 41 of title 5 and subsections (a) and (b) of Section 3324 of title 31, United States Code, shall not apply with respect to this section.

(g) The Secretary of Defense may issue such regulations as may be necessary to implement this section.

NATIONAL SECURITY ACT OF 1947

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TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

* * * * * * *

NOTICE TO CONGRESS OF CERTAIN TRANSFERS OF DEFENSE ARTICLES AND DEFENSE SERVICES

SEC. 503. (a)(1) The transfer of a defense article or defense service exceeding $1,000,000 in value by an intelligence agency to a recipient

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outside that agency shall be considered a significant anticipated intelligence activity for the purpose of Section 501 of this Act.

(2) Paragraph (1) does not apply if—

(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

(B) the transfer—

(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(b)(1) of that title), or the Federal Property and Administrative Services Act of 1949, and

(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

(c) As used in this section—

(1) the term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the terms "defense articles" and "defense services" means the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 121);

(3) the term "transfer" means—

(A) in the case of defense articles, the transfer of possession of those articles, and

(B) in the case of defense services, the provision of those services; and

(4) the term "value" means—

(A) in the case of defense articles, the greater of—

(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or

(ii) the replacement cost; and

(B) in the case of defense services, the full cost to the Government of providing the services.

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DISSENTING VIEWS OF REPRESENTATIVES STUMP, IRELAND, HYDE, CHENEY, LIVINGSTON, AND McEWEN

We have strongly and consistently opposed the provisions constraining the authority of the President to provide military aid to the freedom fighters of the Nicaraguan democratic resistance, known as the United Nicaraguan Opposition (UNO), and to the freedom fighters of the Angolan democratic resistance, known as the National Union for the Total Independence of Angola (UNITA). Although Section 106 of the bill relating to Nicaragua is unnecessary in light of the June 25, 1986 vote of the House on the FY 1987 Military Construction Appropriations Act (H.R. 5052) to support the President's program to provide effective support to the Nicaraguan democratic resistance, we note that nothing in Section 106 is inconsistent with enactment of the President's program in H.R. 5052. In contrast to the wise action of the House on H.R. 5052 in restoring the President's flexibility with respect to Nicaragua, the Committee has included in H.R. 4759 a provision (Sec. 107) eliminating the President's flexibility with respect to Angloa. We urge the House to replace the prohibition concerning Angola with a statement of the sense of the Congress in support of appropriate aid to UNITA. The President of the United States cannot protect and advance American interests in Central America and southern Africa if the Congress shackles his conduct of foreign policy.

NICARAGUA AND ANGOLA FORM PART OF A BROADER SOVIET CHALLENGE

The United States has faced in recent years Soviet adventurism in locations spanning the globe, including Afghanistan, Angola, Cambodia, Ethiopia, Mozambique, Nicaragua, and South Yemen. President Reagan has made clear for years his determination to resist Communist expansion. The central foreign policy issue of the post-war era remains whether the United States of America will meet the Soviet Union's test of America's will to protect and advance the interests of freedom in the face of Communist expansion. If the Soviets are continually rewarded for pursuit of a policy based on the concept that the United States lacks the will to resist Communist expansion, America will find its interests under even more aggressive Communist assault around the globe.

The President's policy of effective support for democratic resistance forces—if the Congress will allow him to pursue the policy with steadiness and determination—will achieve two important U.S. strategic foreign policy objectives. First, the President's program will bring about successful resistance to the establishment and expansion of Communism in areas previously free of Communist domination. Second, the President's program will avoid involvement of the U.S. Armed Forces in wars which sap our mili-

tary and economic strength and political will and risk direct East-West military confrontation.

The President has chosen the wisest course. His program both resists Communist advances and avoids involvement of the U.S. Armed Forces in war, in contexts which support diplomatic efforts and negotiations which could yield positive results to promote peace, freedom, and democracy in areas threatened by Communist adventurism. The United States should quietly proceed apace with the President's program of measured, sustained support for people around the world willing to fight to maintain or regain their freedom.

THE INTERESTS OF THE UNITED STATES REQUIRE SUSTAINED EFFECTIVE SUPPORT FOR THE NICARAGUAN DEMOCRATIC RESISTANCE

United States interests in Central America require maintaining the security of U.S. allies in the region and supporting the establishment and maintenance of democratic governments. For two decades, the Soviet Union and Cuba have constituted a direct threat to U.S. interests in Latin America and the Caribbean. Soviet-Cuban efforts to advance Communism in the Western Hemisphere have now established the first solid Communist foothold on the mainland of the Americas, in Nicaragua. The Soviet-Cuban-Nicaraguan actions have threatened the key U.S. interests in the region of maintaining security and building democracy.

The activities of the Communist Sandinista regime of Nicaragua place at grave risk the security of Central America. Under the Sandinista regime, Nicaragua, with the substantial aid and support of the military and security forces of the Soviet Union and Cuba, has engaged in an unwarranted and unprecedented military buildup threatening the security of neighboring countries and has provided direct and continuing support to Communist guerrilla efforts to subvert the democratically elected governments of those countries. Moreover, the presence of a Communist country in a location of strategic importance to the United States presents a direct threat to U.S. security interests. The maritime traffic of the Caribbean Sea and the Panama Canal hauls two-thirds of America's foreign trade and petroleum. Fully half of the material to supply the Allied Powers in Europe in the event of a Warsaw Pact attack in Europe would transit the Caribbean. New ports and airbases in Nicaragua would enhance substantially Soviet capabilities for projecting military power in the Western Hemisphere. The United States cannot tolerate a substantial expansion of the air and naval power of the Soviet Union and Soviet-proxy states in the Americas. The actions of the Sandinistas thus challenge the security interests of the United States and its allies in the region.

Inside Nicaragua, the Sandinista regime has flagrantly violated the rights of the Nicaraguan people, both by eliminating their fundamental freedoms and by committing atrocities against them. The police state tactics the Sandinistas have adopted from their close Soviet and Cuban allies have served to suppress dissent and consolidate Sandinista control.

As a result of its internal repression and external subversion, the Sandinista regime, which stole the Nicaraguan revolution after ele-

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ments representing a broad political spectrum rose against former Nicaraguan leader Somoza, has no claim to legitimacy and has lost the support of the Nicaraguan people. As the Congress of the United States has declared:

> * * * the Government of Nicaragua has lost the support of virtually all independent sectors of Nicaraguan society who initially supported the removal of the Somoza regime (including democratic political parties of the left, center, and right; the leadership of the Church; free unions; and the business, farmer, and professional sectors) and who still seek democracy, reject the rule of the Frente Sandinista, and seek the free elections promised in 1979. * * * [Section 722(c)(3), International Security and Development Cooperation Act of 1985 (P.L. 99-83) (August 8, 1985)]

The Sandinista regime represents a Communist future for Nicaragua, which will bring increased repression of the Nicaraguan people and increased subversion of governments of neighboring countries. The Sandinistas have become masters of despotic state centralism, suppression of dissent, and Communist expansion through wars of national enslavement masquerading as "wars of national liberation." The only chance for a free and democratic future for the Nicaraguan people lies with the Nicaragua democratic resistance.

The objectives of the United States have remained constant and the President has made them eminently clear. For the past five years, the United States has sought to convince the Sandinista regime in Nicaragua to:

End its military and security ties to Cuba, the Soviet Union, and other Warsaw Pact countries, including the presence in Nicaragua of military and security personnel of those countries;

Reduce its military and security forces to a level consistent with its defensive needs;

End its support for armed subversion and terrorism directed against other countries;

End internal repression of the Nicaraguan people;

Begin negotiation in good faith for a peaceful resolution of the conflict in Central America based upon comprehensive implementation of the September 1983 Contadora Document of Objectives;

Begin the process of national reconciliation by entering into a Church-mediated dialogue with the opposition; and

Observe basic human rights and fundamental freedoms, including the right of free election of democratic government.

To achieve these objectives, the United States for five years has engaged in and supported extensive diplomatic efforts to resolve the problems of the region. That the diplomatic process has not yet produced a favorable outcome stems in part from the various restrictions the Congress has placed on support to the Nicaraguan democratic resistance, which had the effect of relieving the pressure on the Sandinistas to negotiate in good faith toward an early resolution of the conflict. The recent action on the Military Construction Appropriations Act for FY 1987 in support of the Presi-

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dent's program for aid to the Resistance reverses the pattern of congressional obstruction of the President's program. The new consensus in the United States reflected in the recent action will finally create a powerful incentive for the Sandinistas to engage in good faith in external negotiations with the countries of the region and in internal negotiations with the democratic opposition. United States support for the resistance is not an alternative to a diplomatic solution; it is an essential precondition for such a solution.

The security interests of the United States and its allies, the cause of freedom for the Nicaraguan people, and the prospects for a just, lasting and verifiable peace for Central America depend upon sustained and effective U.S. support for the Nicaraguan democratic resistance.

CONGRESS SHOULD NOT ELIMINATE THE OPTION FOR COVERT SUPPORT FOR THE RESISTANCE IN ANGOLA

Section 107 of the bill would deprive the President of authority to provide covert support to Angolan freedom fighters of UNITA should he find such support to be important to the national security. This prohibition repeats the error of the Clark Amendment, adopted in 1975 and repealed only eleven months ago, which prevented U.S. support to anti-Communist forces in Angola and permitted the current Marxist regime to take power in Angola. We resolutely oppose Section 107 of the bill for the reasons set forth in detail in our dissenting views in House Report 99-508, part 1, the intelligence committee report on H.R. 4276.

The proposed Angola prohibition would prohibit United States obligation or expenditure of funds to support military or paramilitary operations in Angola or to provide any assistance to any group engaged in such operation unless:

(1) use of such funds for that purpose is the U.S. Government's openly acknowledged policy;

(2) the President determines that such support is important to the national security;

(3) the President requests that the Congress approve openly acknowledged U.S. support; and

(4) the Congress enacts a joint resolution approving support to the extent specified by the joint resolution.

The prohibition eliminates the covert action option for Angola, an option that might prove essential in meeting the Communist challenge in Angola. Regardless of what the future might hold, under the prohibition the United States could not provide support to UNITA unless the U.S. announced it to the world and conducted a public Congressional debate.

The prohibition contained in the bill reflects a naive assumption that the United States can conduct all aspects of its foreign policy in public, an assumption which ignores the harsh realities of international conflict in the world today and does a disservice to the American people. Suppose that the Angola prohibition became law and the President—whether President Reagan or a future President—found it necessary to provide support for UNITA resistance forces in Angola. Perhaps for diplomatic or political reasons UNITA would not desire to receive U.S. aid if such aid must be ac-

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knowledged openly; perhaps countries willing to help the U.S. in a quiet action to aid UNITA would not be willing to help in an action the U.S. announced to the world; and perhaps the Soviet and Cuban governments which have deployed armed forces in Angola would feel compelled to respond directly and aggressively to an action the U.S. announced to the world. In such a situation, the publicity required by the Angola prohibition would decrease substantially the chances for U.S. success in meeting the Communist challenge in Angola. Such a congressional restriction damages U.S. foreign policy interests.

The history of Angola in the past decade demonstrates the danger of congressionally imposed prohibitions on covert action to support those fighting for freedom against a Communist regime.

In 1975, Portugal announced that it would grant independence to Angola. Portugal and three groups which had for years sought Angolan independence (the Marxist Popular Movement for the Liberation of Angola (MPLA), UNITA, and the National Front for the Liberation of Angola (FNLA)) reached an accord, known as the Alvor Agreement, to establish an interim government, in which all three groups would participate, to draft a constitution and to prepare and hold elections. The interim governing arrangements broke down.

The MPLA sought and received substantial military aid from the Soviet Union and Cuba. In the latter part of 1975, Cuba sent combat troops to Angola to support the MPLA. According to press reports at the time, the United States provided support covertly to Angolan groups opposing the MPLA. The MPLA achieved a number of military successes and controlled the Angolan capital, Luanda, when the Portuguese departed Angola in November, 1975.

The MPLA proclaimed itself the government of a new People's Republic of Angola and welcomed approximately 400 Soviet advisors and an estimated 4,000 Cuban combat personnel before the year was out. As press reports in the United States spoke of a covert program to support anti-Communist groups in Angola, the Congress—in a fit of post-Vietnam, post-Watergate pique—attached to the Department of Defense Appropriations Act, 1976 (P.L. 94-212) a provision prohibiting any such U.S. support during Fiscal Year 1976 (the "Tunney Amendment"). Thereafter, Congress enacted a permanent prohibition against U.S. support for groups in Angola as Section 118 of the International Security and Arms Export Control Act of 1976 (P.L. 94-329) (the "Clark Amendment"). While Congress spent its time hobbling President Ford's ability to meet the Communist challenge in Angola, the MPLA set about consolidating its hold on power.

The Carter Administration attempted rather naively to reconcile with the MPLA, citing as its objective exploitation of commercial opportunities for U.S. business and use of positive incentives for the MPLA to decrease its reliance on the Soviet Union and Cuba. While the Carter Administration attempted to use persuasive skills on the MPLA, the number of Cuban combat troops in Angola grew to approximately 20,000. In 1980, Congress made minor procedural adjustments in the Clark Amendment, but left in force the prohibition on U.S. aid to Angola opposition groups.

The Marxist MPLA government in Angola, whose safety and survival the Congress guaranteed with the Clark Amendment, developed ever more close military and political ties with the Soviet Union and Cuba. Today approximately 30,000 Cuban combat troops support the MPLA government in Angola, and Soviet, Cuban, and East German advisors fill important roles in support of the Angolan government.

Despite the repressive military efforts of the MPLA regime, UNITA survived the decade as an effective resistance group in opposition to the MPLA. Under the leadership of Dr. Jonas Savimbi, UNITA's strength has grown to encompass about 40,000 people, many under arms. The UNITA organization controls a substantial portion of Angolan territory and carries out civil government functions in that territory in addition to military operations in resistance to the MPLA.

In August 1985, the Congress repealed the Clark Amendment by Section 811 of the International Security and Development Cooperation Act of 1985 (P.L. 99-83). In September 1985, the MPLA began a major offensive against UNITA. During the latter part of 1985 public and congressional debate in the United States focused on whether to provide aid to support UNITA, which the repeal of the Clark Amendment made possible.

We believe that the United States should provide to UNITA full diplomatic, economic, and arms support through whatever means will best contribute to achievement of U.S. foreign policy objectives in the region.

THE CONGRESS FACES A CLEAR CHOICE: SUPPORT FREEDOM FIGHTERS OR ALLOW COMMUNISM TO PREVAIL

Restrictions on U.S. support to resistance forces in Nicaragua and Angola serve only to protect the Communist governments of the Sandinista Front and the Marxist Popular Movement for the Liberation of Angola (MPLA) as they move under Soviet and Cuban tutelage to consolidate control. By restrictions on aid to resistance forces, the United States Congress contributes to the prospects for success of Soviet proxy wars of national enslavement. The United States cannot permit the Communist forces of the Sandinistas in Nicaragua and the MPLA in Angola to complete their consolidation of control and eliminate the resistance forces in those countries. The best way to prevent Communist success in Nicaragua and Angola is to support the President's carefully crafted policies.

BOB STUMP,
Ranking Minority Member.
ANDY IRELAND.
HENRY J. HYDE.
DICK CHENEY.
BOB LIVINGSTON.
BOB MCEWEN.

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